

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

:
ECOLAB, INC., et al., :
:
Plaintiffs, :
:
v. : 1:22-CV-50
:
ANTHONY RIDLEY, et al., :
:
Defendants. :

Chattanooga, Tennessee
August 10, 2023

BEFORE: THE HONORABLE TRAVIS R. MCDONOUGH
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

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MOTION HEARING

APPEARANCES: (Continuing)

FOR THE DEFENDANT RIDLEY:

LANCE W. POPE
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FOR THE DEFENDANT CHEMTREAT INC.:

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1 THE COURT: All right, Madam Clerk, call the case,
2 please.

3 THE COURTROOM DEPUTY: Civil Action 1:22-CV-50,
4 Ecolab, Incorporated, et al., versus Ridley, et al.

5 THE COURT: Okay. Counsel, make appearances, please.

6 MR. WALTON: Yes, Your Honor. This is Dave Walton
7 from Fisher Phillips for the plaintiffs.

8 THE COURT: Mm-hmm.

9 MR. UPPAL: Pavneet Singh Uppal, Fisher Phillips.

10 THE COURT: All right.

11 MR. BOEHM: Good morning, Judge. Ted Boehm for the
12 plaintiffs.

13 THE COURT: Yeah.

14 MR. UPPAL: Your Honor, with us is our client
15 in-house counsel Kate Middleton, in-house counsel for Ecolab.

16 THE COURT: Okay. Good morning. Welcome.

17 MS. MIDDLETON: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. POPE: Your Honor, I'm Lance Pope --

20 THE COURT: Yeah.

21 MR. POPE: -- with Patrick, Beard, Schulman &
22 Jacoway. I'm here for Mr. Ridley.

23 THE COURT: All right.

24 MS. LUND: Good morning, Your Honor. Juli Ann Lund
25 from Williams & Connolly on behalf of defendant ChemTreat,

1 Incorporated.

2 MS. MIRMIRA: Good morning, Your Honor. Vidya
3 Mirmira from Williams & Connolly, also for ChemTreat.

4 MR. EISELSTEIN: Good morning, Your Honor. Kyle
5 Eiselstein, Miller & Martin, also for ChemTreat.

6 THE COURT: All right.

7 Okay. So you guys have -- you've run one judge off
8 of this case, Judge Lee. So we're going to try to keep it to
9 just her. Hopefully I can survive what's going to happen the
10 next few weeks.

11 Let's -- so we called this hearing, as you know, to
12 talk about sanctions, discovery sanctions under Rule 37. And
13 what I'd like to do, if we can, is -- and we've got, you know,
14 a couple of hours here. We don't have to use it all.
15 Hopefully we can be efficient. But what I'd like to do is
16 hear from each side. If there's a -- if there's a sanction
17 you're requesting, tell me what it is. Be specific. Tell me
18 -- tell me what you're asking for. Tell me what it's related
19 to, what act of spoliation it's related to, right? And then
20 -- and then tell me what prejudice it caused and -- and how
21 would your proposed sanction cure that prejudice.

22 Now, that's for the majority of the issues. I know
23 we still have the issue about Mr. Ridley and whether that's --
24 whether his conduct falls under 37(e)(2) or (e)(1). We can
25 talk about that, too. But that's the way I'd like it to go.

1 And so if -- you know, come up, tell me what you're asking
2 for, tell me why, tell me what it's related to, tell me how it
3 cures the prejudice. Then I'm going to hear from the other
4 side. We'll go back and forth. So should be -- should be a
5 lot of standing and sitting.

6 And we'll get started. I want to do that, we'll
7 talk about the Special Master idea, we'll talk about what
8 we're going to do after today, because I think we'll have to
9 make a few changes here.

10 So start with the plaintiff. Who wants to speak for
11 the plaintiff?

12 MR. WALTON: I'd like to start, Your Honor --

13 THE COURT: Yes, sir.

14 MR. WALTON: -- if that's all right.

15 THE COURT: Yes. Come on up.

16 (Brief pause.)

17 THE COURT: Mr. Walton, right?

18 MR. WALTON: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. WALTON: Very nice to meet you.

21 THE COURT: Yes, sir.

22 MR. WALTON: And may it please the Court.

23 Based on your comments, Your Honor, I assume that
24 you'd like me to address spoliation motions, not address the
25 motion involving the WD drive and the reopening of discovery?

1 THE COURT: Well, we can -- let's start with --
2 I really don't care.

3 MR. WALTON: Okay. Sure.

4 THE COURT: If you want to talk about the WD drive --

5 MR. WALTON: Sure.

6 THE COURT: -- first and you want to tell me why it's
7 intentional and deprived you of that, then I'll hear it.

8 MR. WALTON: Sure.

9 THE COURT: But I just want to take it one issue at a
10 time.

11 MR. WALTON: Absolutely. Well, I mean, there's a --
12 there's a lot of crossover from our standpoint, Your Honor.

13 THE COURT: Okay.

14 MR. WALTON: So I'll start with the WD drive issue.
15 That --

16 THE COURT: Okay.

17 MR. WALTON: That drive has been wiped.

18 THE COURT: Yep.

19 MR. WALTON: In our motion we asked for the computer
20 that was used to wipe the drive.

21 THE COURT: Right.

22 MR. WALTON: We asked counsel --

23 THE COURT: The per- -- the personally owned
24 computer.

25 MR. WALTON: Yes, sir.

1 THE COURT: Yeah.

2 MR. WALTON: Well, we assume it's a personally owned
3 computer. After we received Your Honor's order on August 1st,
4 I asked Mr. Pope if he would tell me what computer was used and
5 if he imaged it, and he wouldn't tell me. So I don't know,
6 standing here --

7 THE COURT: All right. Let's see if he'll tell me.
8 Let's see if he'll tell me.

9 Mr. Pope --

10 MR. POPE: Yes, Your Honor.

11 THE COURT: -- what are we dealing with? What --
12 what's the computer? There had to be -- I assume there had to
13 be a computer to use this hard drive, this external hard drive.
14 So do you know what it was?

15 MR. POPE: Yes. I believe it's his wife's laptop,
16 actually.

17 THE COURT: Okay. All right. And tell -- describe
18 it for me. What is it?

19 MR. POPE: I believe it's an HP computer, Your Honor.

20 THE COURT: Okay.

21 MR. POPE: It's an old laptop that his wife has had
22 for some period of time.

23 THE COURT: Okay. And he didn't -- did he -- well,
24 tell me what you know about it. Did he use it frequently, or
25 just on this one special occasion, or --

1 MR. POPE: No, Your Honor. It's my understanding
2 that it was his wife's laptop and she used it, he would
3 periodically --

4 THE COURT: Yeah.

5 MR. POPE: -- use it as well, not routinely.

6 THE COURT: Okay.

7 MR. POPE: Your Honor is well aware that we put in a
8 declaration that talked about Mr. Ridley's interaction with the
9 WD drive.

10 THE COURT: Right.

11 MR. POPE: But despite his recollection that he
12 believed that he used the CCleaner program from a different
13 laptop, we believe that it's his wife's laptop --

14 THE COURT: Okay.

15 MR. POPE: -- and that was connected to that computer
16 from, I think, February the 12th through February the 14th,
17 which means that was the -- that was the computer that --

18 THE COURT: Okay.

19 MR. POPE: -- was used to wipe the drive.

20 THE COURT: And where is the computer now?

21 MR. POPE: The computer is -- they still have it.
22 It's in their possession.

23 THE COURT: All right.

24 MR. POPE: After I got the Court's order, I of course
25 asked them to set it aside so that it would be preserved.

1 THE COURT: Okay.

2 MR. POPE: Early in the case we had just an image
3 taken of the computer, Your Honor.

4 THE COURT: Okay.

5 MR. POPE: That image, I believe, was conducted on
6 April -- around April the 16th of 2022, right at the beginning
7 of discovery. So there would be a -- be a image from after --
8 from later than when the allegation is that he ran the
9 CCleaner program --

10 THE COURT: Is that -- is that a year, or is that
11 just two months? I can't -- is it --

12 MR. POPE: Two months.

13 THE COURT: Two months, yeah. Okay.

14 MR. POPE: Two months, yeah. Yes, Your Honor.

15 THE COURT: All right. So was anything produced from
16 that computer? Did you search that computer?

17 MR. POPE: Nothing was produced from the computer,
18 no.

19 THE COURT: Okay.

20 All right, Mr. Walton, does that help?

21 MR. WALTON: Yes, sir. Thank you very much.

22 So we would like to have an image of I think the
23 April 2022 image that Mr. Pope referred to, and we would also
24 like the opportunity to take a current -- to take a current
25 image. That's pretty standard under a forensic protocol.

1 THE COURT: Okay.

2 MR. WALTON: Now, if the Court feels more comfortable
3 doing that with us working through a Special Master, we have no
4 objection to that.

5 THE COURT: Why do you need -- why do you need two
6 images? Why wouldn't you want the --

7 MR. WALTON: Excuse me?

8 THE COURT: Why wouldn't you want the 2022 image?
9 Why is that not enough?

10 MR. WALTON: Because we want to see if there's
11 anything else that's been added to it since 2022, if there's
12 been any other Nalco files that have been added to it since
13 2022, if there's any other thing that might be relevant to this
14 case that's been added to it since 2022, because in this
15 matter, Your Honor, there's a lot of USB drives floating around
16 that aren't accounted for.

17 THE COURT: Yeah. Well, we've got to stop somewhere,
18 though, right?

19 MR. WALTON: Yes, sir.

20 THE COURT: I mean, he probably went to the library,
21 too, and clicked around on the -- on the internet. We can't --
22 you're not going to get those.

23 MR. WALTON: Oh, yeah. But I'm -- but I'm not asking
24 for that. I mean, he --

25 THE COURT: Yeah.

1 MR. WALTON: -- he hasn't been truthful about his
2 wife's computer from the beginning and there has to be a reason
3 and he's been trying to hide it.

4 THE COURT: Mm-hmm.

5 MR. WALTON: And it took us until this point, five
6 minutes ago, to find out that he used his wife's computer to do
7 this. He previously denied in request for admissions he had a
8 personal computer. In his deposition he said he never used his
9 wife's computer for any Nalco or Ecolab documents. And so
10 we -- in order to protect my client, Your Honor, we have to
11 cast a wide net but not as wide as -- as a library, as the
12 internet and everything else.

13 THE COURT: Okay. All right. Go ahead.

14 MR. WALTON: Okay. And we brought our forensic
15 examiner here, Mr. Lieb, in case Your Honor wanted to ask him
16 any questions.

17 THE COURT: Okay.

18 MR. WALTON: And I believe he would tell you from a
19 forensic standpoint he would want the image of the image and
20 the new image.

21 THE COURT: Okay.

22 MR. WALTON: Okay?

23 THE COURT: All right. So let me -- let me hear
24 from -- is that about all you have on that issue?

25 MR. WALTON: Yes, sir.

1 THE COURT: That's really -- we've already skipped
2 over a little bit, probably, to what the Special Master might
3 be charged with, but that's okay. So let me hear from the
4 defendants.

5 Who wants to -- who wants to start?

6 MR. POPE: Sure. I'm happy to start, Your Honor.

7 THE COURT: Yeah. Come on up.

8 (Brief pause.)

9 MR. POPE: So I think the order that you mentioned is
10 related to the sanctions under Rule 37.

11 THE COURT: Mm-hmm.

12 MR. POPE: We of course filed a request for sanctions
13 against the plaintiffs --

14 THE COURT: Yep.

15 MR. POPE: -- related to their failure to preserve
16 the LaCie drive and Mr. Ridley's --

17 THE COURT: Is that how you say it? LaCie? Is
18 that --

19 MR. POPE: It's been called the LaCie drive.

20 THE COURT: Okay.

21 MR. POPE: It's been called the LaCie drive. I don't
22 know that anyone's sure about it. But I call it the LaCie
23 drive, Your Honor.

24 THE COURT: Okay.

25 MR. POPE: And so you'll recall, Judge, the case --

1 THE COURT: Mr. Lieb may know how to say it.

2 (To Mr. Lieb) How do you say it?

3 MR. LIEB: I say LaCie.

4 THE COURT: LaCie? Okay. That's what I had in my
5 head at least. So I guessed right, I guess.

6 (To Mr. Pope) Go ahead.

7 MR. POPE: The case started, Your Honor, in --
8 I guess really in February of 2022 when the plaintiffs sent my
9 client and ChemTreat a demand letter.

10 THE COURT: Yep.

11 MR. POPE: First time they'd heard from Ecolab since
12 Mr. Ridley resigned on July 1st of 2021. And then a short
13 period of time attempting to exchange some information. And
14 then in March of 2022 the plaintiffs filed their first version
15 of the complaint.

16 THE COURT: Right.

17 MR. POPE: And it squarely focused on the LaCie drive
18 and all of these what they allege to be download sessions to
19 the LaCie drive, 16,000 files referenced on the DLP report
20 where they allege that Mr. Ridley deleted files off the
21 corporate OneDrive, transferred them to the LaCie drive, and
22 took them with him to ChemTreat to use in competition with
23 plaintiffs.

24 From the very beginning Mr. Ridley has advised the
25 plaintiffs that he returned the LaCie drive when he left. He

1 produced -- we have produced communications with his
2 supervisor, Jackie Herrera, where he reached out to her --

3 THE COURT: What's the name, again?

4 MR. POPE: Jackie Herrera.

5 THE COURT: Herrera.

6 MR. POPE: Yes, sir.

7 THE COURT: Okay.

8 MR. POPE: -- where he reached out and said, "Will
9 you send me a shipping label where I can send my computer and
10 accessories?"

11 She did that. He returned them. And months into
12 the case we received a subpoena response from the plaintiff's
13 IT provider --

14 THE COURT: Mm-hmm.

15 MR. POPE: -- that indicated they received a computer
16 and the LaCie drive.

17 THE COURT: Right. But I think what Mr. Walton was
18 really -- what we're focused on so far—and we'll get to your
19 request—is the WD drive, right?

20 Isn't that right, Mr. Walton?

21 MR. WALTON: Yes, Your Honor.

22 THE COURT: So let's talk about -- so he -- he -- the
23 only thing I heard -- I didn't hear, really, a request -- the
24 only sanctions request I heard was, "We want two images." So
25 what do you say about that?

1 MR. POPE: Right.

2 THE COURT: Two images of the -- the wife's computer.

3 MR. POPE: Okay. So --

4 THE COURT: So how does that -- is this -- I didn't
5 hear Mr. Walton say -- ask for anything, really, under
6 37(e)(2). What I hear him asking for is a sanction that would
7 fall under (e)(1). So how do you feel about the images?

8 MR. POPE: Yes, Your Honor. And I -- we advised the
9 Court in our response to the plaintiff's motion for sanctions
10 that there is certainly a category of information that is
11 missing from the WD drive, from the last time that he deleted
12 files from the WD drive to the time that the cleaner program
13 was run.

14 THE COURT: Mm-hmm.

15 MR. POPE: And it seems appropriate for the Court to
16 allow additional discovery as it relates to that category of
17 information. And so the plaintiffs' request for an image of
18 the drive from the one that we took from April of 2022, to run
19 some searches on that, seems appropriate, Your Honor.

20 THE COURT: Okay.

21 MR. POPE: And so I think really the focus should be
22 on what the search would be about. But --

23 THE COURT: So why don't they already have it?
24 What -- why are we here in August and they haven't -- you said
25 you didn't give them any discovery from the image and they have

1 not had access to the image. Why not?

2 MR. POPE: Well, so the discovery request,
3 Your Honor, requested documents, Nalco and Ecolab documents.

4 THE COURT: Mm-hmm.

5 MR. POPE: And there was never a request for any
6 inspection of a device --

7 THE COURT: Okay.

8 MR. POPE: -- until late in the discovery period.
9 And the plaintiff's inspection request included many, many,
10 many devices other than the WD drive and other than the wife's
11 laptop, which --

12 THE COURT: But that was, like, what, December or
13 something, right?

14 MR. POPE: No, Your Honor.

15 THE COURT: A few months ago, right?

16 MR. POPE: No. It was in -- as I re- -- I'll have to
17 look, but, as I recall, it was in, I think, February of --

18 THE COURT: Oh, right before discovery? Yep.

19 MR. POPE: -- right before discovery closed --

20 THE COURT: Yep.

21 MR. POPE: -- that's right.

22 THE COURT: Yep. That's right.

23 MR. POPE: We objected. And then after we objected,
24 we engaged in a meet-and-confer about what we would agree to
25 exchange but not this -- not every single document that was

1 in -- or device or cloud storage program and all of that that
2 was in Mr. Ridley's orbit.

3 THE COURT: Right. But my question is, under these
4 lights you say it's reasonable to give them this -- this image.

5 MR. POPE: (Moving head up and down.)

6 THE COURT: It's August. What are we doing? Why
7 take so long? Why -- if a piece of what you have is
8 reasonable, why don't they have it? Why didn't we make more
9 progress? Why do we have to, you know, have a donnybrook every
10 time anybody has a little disagreement?

11 MR. POPE: Right. Well, I understand, Your Honor.
12 I think it's -- I think it's important for the Court to keep in
13 context where -- what happened by way of discovery.

14 We received discovery requests and then we worked to
15 produce documents responsive to the discovery requests and so
16 part of that inquiry was whether there were documents on these
17 devices that were responsive to the discovery requests.

18 THE COURT: Mm-hmm.

19 MR. POPE: What we're talking about now are not
20 documents, it's forensic artifacts and proof of --

21 THE COURT: I know, but they asked for them five or
22 six months ago, right? And you're -- and you're telling me
23 today that it -- "Yeah, it makes sense. We'll give it to
24 them." And so I'm wondering what -- what have we been doing
25 for -- it's a rhetorical question. I'm not trying to -- I've

1 made my point. What -- so --

2 All right, Mr. Walton, sounds --

3 (To Mr. Pope) Okay. So what about the second
4 image, a newer image? I'm not sure I -- how I feel about
5 that, but what's your position on that?

6 MR. POPE: Your Honor, I -- Mr. Ridley's wife's
7 laptop is set aside. I think if they want to take a subsequent
8 image of the laptop, they're more than -- I don't know that
9 there's any additional value to the case --

10 THE COURT: Yeah.

11 MR. POPE: -- but I don't -- given the way the proof
12 has developed, Mr. Ridley is not going to object to the
13 plaintiffs' looking at an additional image of his wife's
14 laptop --

15 THE COURT: Okay.

16 MR. POPE: -- if the image from April of 2022 is not
17 sufficient.

18 THE COURT: All right. So we've made a little
19 progress, then.

20 Mr. Walton --

21 (To Ms. Lund) Or do you want to be heard on this
22 issue? On the wife's laptop?

23 MS. LUND: If I can, Your Honor.

24 THE COURT: Okay. Come on up, Ms. Lund.

25 (Brief pause.)

1 MS. LUND: Your Honor, we understand the Court's
2 ruling to reflect that it has already determined it's
3 appropriate to permit a limited inquiry into this evidentiary
4 gap with regard to how the WD drive interacted with
5 Mr. Ridley's wife's laptop.

6 THE COURT: Mm-hmm.

7 MS. VARNELL: And so the question is, what is the
8 best means to do that. ChemTreat believes that a Special
9 Master is appropriate. We think given the unfortunate history
10 of the parties' inability to reach compromises --

11 THE COURT: I think Mr. Walton is -- I don't think
12 anybody's disagreeing with that, right?

13 MS. LUND: Right. Well, and I think that an issue
14 that neither Mr. Walton nor Mr. Pope have touched upon is the
15 question of what else could be on this image. And our concern
16 with regard to ChemTreat is twofold. This is a known/unknown.
17 We don't know what's on that laptop. We didn't realize it had
18 been used. What we do know is that for a while Mr. Ridley, as
19 an employee of ChemTreat, was within the corporate privilege.
20 And there may be privileged communications that he put --

21 THE COURT: Okay.

22 MS. LUND: -- onto that laptop, we don't know. We
23 also know that Mr. Ridley had access to, you know, highly
24 confidential, potentially trade-secret material that we have
25 designated AEO in this case, attorneys' eyes only. Again, we

1 don't know if there's any material such as that that's on the
2 laptop. And we do not want a direct forensic image of
3 everything that's on that laptop, which could include attorney
4 confidences, could include attorneys' eyes only material,
5 directly provided to the plaintiffs. And --

6 THE COURT: No, I understand. What I'm -- so just to
7 be clear, my -- and I can be moved from this, but my -- my
8 starting point is Special Master who is charged with doing
9 things, looking for things, filtering things --

10 MS. LUND: (Moving head up and down.)

11 THE COURT: -- and then it comes to me, and then if
12 it's appropriate to share, we'll share. So I understand that.
13 And --

14 MS. LUND: (Moving head up and down.)

15 THE COURT: -- I was more worried about personal
16 content than --

17 MS. LUND: Right.

18 THE COURT: -- than -- I didn't know that was a
19 possibility. So thank you for --

20 MS. LUND: Right.

21 THE COURT: Yeah.

22 MS. LUND: And of course, Your Honor, that's a
23 possibility, too, as you said. And I think that we were
24 viewing your court's order in the same way that you have just
25 articulated, which is that -- a way of pulling the parties out

1 of what seems to be, you know, an endless return of litigation
2 and of disputes between the experts as to what forensic
3 artifacts mean and so on is to charge the Special Master with
4 that first level of searching, of review, of analysis.

5 THE COURT: Mm-hmm.

6 MS. LUND: And then the only thing that we request in
7 addition to that is what whatever materials go to the
8 plaintiffs or Mr. Ridley, that ChemTreat have equal access to
9 any forensic images, documents, and artifacts.

10 THE COURT: Yep. Yeah. Yeah. Okay. All right.

11 MS. LUND: Thank you, Your Honor.

12 THE COURT: Thank you.

13 Mr. Walton, what's --

14 MR. WALTON: I'd first like to --

15 THE COURT: -- let's see if we can put a bow on this
16 issue.

17 MR. WALTON: Yeah. The first thing I'd like to do,
18 Your Honor, is, I think I inadvertently misled the Court. My
19 understanding of the Court's order said that we would
20 potentially get access to the computer that was used to wipe
21 the WD drive, to determine -- and then determine whether
22 sanctions under 37(b)(2) are warranted. So I guess the way
23 I see this, Your Honor, it's like following a string of
24 breadcrumbs. So the --

25 THE COURT: Okay.

1 MR. WALTON: So I want to reserve --

2 THE COURT: You've not backed off that. You've --

3 MR. WALTON: Okay.

4 THE COURT: You're not there. I mean --

5 MR. WALTON: Yes, Your Honor.

6 THE COURT: Okay. That's fine. I understand.

7 MR. WALTON: Exactly. Exactly.

8 THE COURT: I understand. Okay. So --

9 MR. WALTON: And --

10 THE COURT: -- so have we solved that issue, the
11 issue with the personal --

12 MR. WALTON: Yes. I think, Your Honor. But I have
13 one question for the Court --

14 THE COURT: All right.

15 MR. WALTON: -- if I may.

16 THE COURT: Okay.

17 MR. WALTON: When you say "Special" -- when the Court
18 says "Special Master," Your Honor, are you thinking about
19 hiring a lawyer as the Special Master and then having that
20 lawyer bring in a third-party forensic expert, or are you --

21 THE COURT: Yes.

22 MR. WALTON: Okay. All right. So my suggestion is,
23 is that whomever's hired as the Special Master brings in the
24 third party, that then the parties work with the Special Master
25 to negotiate a protocol, and we don't have to get into all

1 those specifics right now.

2 THE COURT: No, I -- absolutely.

3 MR. WALTON: Okay.

4 THE COURT: I mean, I -- you know, I'll get involved
5 if I have to, but I hope I don't have to. So...

6 MR. WALTON: Okay. All right. And then we still
7 have the right -- I just want to make sure -- we still have the
8 right to seek 37(b) -- (e) (2) sanctions on down the road.

9 THE COURT: Sure.

10 MR. WALTON: Okay. All right. And so that, I think,
11 closes the issue on the WD drive, at least --

12 THE COURT: Well, now, okay, so is there -- but is
13 there anything else you're asking -- okay, is there anything
14 under (e) (1) you want to talk about today with regard to the WD
15 drive? Is there something --

16 MR. WALTON: To the WD drive, yes. I think the only
17 thing that we would ask for, Your Honor, is, if he has any
18 other drives or computers or an iPad that he ever used either
19 to connect to his ChemTreat computer or to touch a Nalco file,
20 we would like to get images of those, too.

21 THE COURT: Okay.

22 MR. WALTON: We -- we do know he had an iPad --

23 THE COURT: But there's been discovery requests about
24 that, and I assume they've been answered, right? I mean, has
25 he essentially asked you what he just asked, in discovery?

1 MR. POPE: Yes, Your Honor.

2 THE COURT: And you've answered that?

3 MR. POPE: Yes, I have.

4 THE COURT: And the only thing in play is this one
5 personal computer? This one?

6 MR. POPE: Yes, that's correct.

7 MR. WALTON: Well, and this is where we have a point
8 of disagreement, Your Honor, is that we do know from their
9 CrowdStrike logs that he attached a -- his iPad to his
10 ChemTreat computer. So we -- so we do know that connection was
11 made. There are several other USB drives that are unaccounted
12 for. If he says he doesn't have them, I have to take him at
13 his word. But we do know that there is an iPad he did connect
14 to his ChemTreat computer, and we would like to have that
15 searched as well with the Special Master.

16 THE COURT: Okay. What about that, Mr. Pope?

17 MR. POPE: Your Honor, of course this has not been
18 subject to any motion that's before the Court.

19 THE COURT: Okay.

20 MR. POPE: Mr. Walton made a discovery request about
21 this, a request to inspect. The -- we objected to this based
22 on the fact that whether it was included in his motion or not,
23 it wasn't included in the list of devices originally, and --

24 THE COURT: In what list of devices?

25 MR. POPE: In the original request to inspect, the

1 iPad was not included in that. Then in a subsequent motion, as
2 I recall, Mr. Walton asked to compel the inspection of that
3 device, but it was never included in his request to inspect.
4 We objected to it, in the -- in the briefing.

5 THE COURT: Well, I guess the question at this point,
6 though, is, why does it not make sense as a -- as a sanction to
7 include it?

8 MR. POPE: Well, a couple of reasons. Mr. Walton's
9 reference to it being connected to the CrowdStrike computer --
10 several things could have been connected to the ChemTreat
11 computer and show up in the CrowdStrike report. But there's no
12 information at all in the CrowdStrike report that any Nalco or
13 Ecolab file was ever accessed from the iPad.

14 And as I recall the testimony, Your Honor, there is
15 no evidence whatsoever that the connection that was made to
16 the ChemTreat computer would have even allowed a document
17 transfer to occur. You know, people plug up their laptops --
18 their iPads to laptops all the time, to charge them or
19 whatever. There is just -- there's no evidence to support any
20 sort of inspection of Mr. Ridley's iPad. There's no evidence
21 that I'm aware of in the record anywhere that any device was
22 accessed or transferred from the iPad.

23 THE COURT: Well, let me ask you this way,
24 Mr. Walton. What does -- here's my very oversimplified
25 understanding of what --

1 MR. WALTON: Sure.

2 THE COURT: -- where we are because of spoliation,
3 right? We have trouble knowing what Mr. Ridley took, because
4 of shortcomings on your side of the v, right? And we have
5 trouble knowing what Mr. Ridley did with whatever he took,
6 because of shortcomings over here. (Indicating.)

7 We -- what are you going to gain from the iPad?

8 MR. WALTON: Okay. Sure. First of all, on the LaCie
9 drive, we do know what he downloaded --

10 THE COURT: Right.

11 MR. WALTON: -- from the DLP report, data loss
12 prevention report. Okay? What we don't know is what happened
13 to the LaCie drive afterwards. Okay?

14 THE COURT: Right.

15 MR. WALTON: The WD drive --

16 THE COURT: But you know -- but here is my point.

17 MR. WALTON: Sure. Yeah.

18 THE COURT: You know -- according to your theory --

19 MR. WALTON: Yes.

20 THE COURT: -- you know he had things that you didn't
21 want him to have.

22 MR. WALTON: Yes.

23 THE COURT: And so whether it was on an iPad or on
24 the LaCie drive, I mean, that -- you say you know that he had
25 things.

1 MR. WALTON: Yes, sir.

2 THE COURT: So isn't at that point what's important
3 to figure out what he did with them, how he used them --

4 MR. WALTON: Exactly. What --

5 THE COURT: -- how he shared them?

6 MR. WALTON: And, Your Honor --

7 THE COURT: So if he's just copying them in a circle
8 on every digital device he has, who cares, right?

9 MR. WALTON: Exactly.

10 THE COURT: What I think you ought to be more
11 interested in is whether he disseminated it, right?

12 MR. WALTON: Exactly right. And the iPad is a way --

13 THE COURT: But the iPad is just his.

14 MR. WALTON: Well, it's his, but it's also a way to
15 disseminate that information.

16 THE COURT: It is. But if you go and look at places
17 where the information would almost certainly have been
18 disseminated to if it were any benefit to ChemTreat, right --

19 MR. WALTON: Mm-hmm.

20 THE COURT: -- doesn't matter where it came from,
21 it's either there or it's not there, right?

22 MR. WALTON: Exactly right, Your Honor. But you've
23 got to backtrack a little bit to say, "Okay, what do we do
24 have?" so that we can find the breadcrumbs to track it. Okay?

25 And so I understand what you're saying is, "Why

1 don't you go to the end repository and look there?"

2 THE COURT: Mm-hmm.

3 MR. WALTON: Well, there could be a thousand end
4 repositories. And the way forensically to figure out which end
5 repositories you should focus on is to follow the trail of
6 breadcrumbs that you have, which includes the iPad.

7 Plus, we have a disagreement that -- of -- Mr. Lieb
8 has found that Mr. Ridley had his own cloud-based OneDrive
9 account. Mr. Ridley denies that. The iPad might show
10 evidence of that.

11 THE COURT: Mm-hmm.

12 MR. WALTON: So I suggest, respectfully, that this
13 could be something that the Special Master deals with.

14 THE COURT: But all this, everything you just said,
15 doesn't amount to much unless -- at this point in the
16 litigation --

17 MR. WALTON: Yeah.

18 THE COURT: -- unless it gets somewhere else within
19 ChemTreat, right?

20 MR. WALTON: Yeah. But it could be --

21 THE COURT: So why don't we start there? Why don't
22 we -- why don't we start at the end?

23 MR. WALTON: Because then what we're going to have to
24 do—and that's going to be part of our request against
25 ChemTreat—is grab all the local hard drives for the 12

1 custodians that they picked --

2 THE COURT: Mm-hmm.

3 MR. WALTON: -- and start to search all those. Okay?

4 And that's a massive undertaking.

5 THE COURT: I don't know that it is.

6 MR. WALTON: It --

7 THE COURT: I mean --

8 MR. WALTON: Well, it might not -- it might not be
9 that big, but these people also have their own personal
10 stuff --

11 THE COURT: Yeah, but come on --

12 MR. WALTON: -- you know, and so --

13 THE COURT: -- I mean, we -- we're -- hm-mmm, not
14 yet, not yet.

15 MR. WALTON: We can start chasing down rabbit holes
16 here easily --

17 THE COURT: That's what we're not going to do.

18 MR. WALTON: -- easily. And so that's why I said
19 that the iPad, if you follow the breadcrumb trail, it -- if you
20 follow the trail, it helps you stop chasing down the rabbit
21 holes.

22 Now, if you want to give us --

23 THE COURT: But you don't really care -- you don't
24 care what device it came from if it's on another device --

25 MR. WALTON: Yeah --

1 THE COURT: -- at ChemTreat --

2 MR. WALTON: Yeah. That's true. That's --

3 THE COURT: -- right? So why -- I mean, yeah, it may
4 be --

5 MR. WALTON: That's true.

6 THE COURT: -- an interesting academic exercise, or
7 it -- or maybe, you know, if you find some -- some other
8 evidence, you know, at the end of the line, there might -- I
9 can't manage what it would be --

10 MR. WALTON: Yeah.

11 THE COURT: -- there may be a reason to come back and
12 look. But I don't see that it adds much at this point.

13 MR. WALTON: Well, here's where I slightly disagree,
14 respectfully, with the Court. Okay?

15 THE COURT: Mm-hmm.

16 MR. WALTON: We might find on the iPad, for example,
17 that Clay Cissell has a personal Dropbox account and Ridley was
18 sending stuff to Clay Cissell's personal Dropbox account and
19 the only way he was doing that was through his iPad. Okay?
20 And there would be no other way that we could find it. So
21 that's why we would want access to the iPad, just to see --

22 THE COURT: Well, it may -- but you asked him about
23 this, right? I mean, you asked other people about this, didn't
24 you?

25 MR. WALTON: Yeah, but they all deny it. But, you

1 know, I don't want to rip Mr. Ridley's credibility here, but
2 we've had a lot of problems with his credibility.

3 THE COURT: I mean, even -- even setting aside his
4 credibility, you asked other sources about that, I'm sure,
5 right?

6 MR. WALTON: Well, we asked Clay Cissell, and they
7 all deny it. But there's been a lot of denials, Your Honor,
8 that we've chased down and have proven that they were false
9 denials.

10 And so the iPad, I think, as compared to the WD
11 drive, it is a small piece, but because it was connected to
12 the ChemTreat computer, we think that's enough to get -- to
13 get us access to it.

14 THE COURT: Okay. All right. I hear you. Let's--
15 All right. Does that take care of sanctions other than
16 possible (e)(2) issues related to the WD drive?

17 MR. WALTON: Yes, Your Honor.

18 THE COURT: Okay. What do you want to talk about
19 next?

20 MR. WALTON: Well, I think we want to talk about the
21 spoliation of the Chem- -- of Ridley's ChemTreat computer and
22 what we can ask for for that. I think Your Honor has already
23 ruled that that's 37(e)(1) sanctions.

24 THE COURT: Right. Mm-hmm. Hang on just a second.

25 (Brief pause.)

1 THE COURT: All right. Let's talk about the
2 ChemTreat laptop.

3 MR. WALTON: All right.

4 THE COURT: Anything else from over here on -- to --

5 MS. LUND: No, Your Honor.

6 THE COURT: -- wrap it up?

7 (To Mr. Walton) Okay. Go ahead.

8 MR. WALTON: Just a brief background. The ChemTreat
9 laptop was wiped about two or three weeks after they received
10 our preservation notice. I -- Your Honor's already found that
11 it was -- it was negligence under 37(e)(1).

12 THE COURT: Mm-hmm.

13 MR. WALTON: So the first thing that we were going to
14 ask for was access to the WD drive, which we've already talked
15 about. Second thing was access to these data repositories that
16 were searched by Jim Vaughn which were -- which are now subject
17 to an objection that we had to Judge Lee's ruling on the motion
18 to compel access to those data repositories.

19 THE COURT: What was the subject of the --

20 MR. WALTON: Sure. It was a motion to compel the --
21 that we get access to the data repositories that were searched
22 by their expert. And that's up in front of Your Honor on the
23 objection from an order from Judge Lee.

24 THE COURT: Give me a minute.

25 MR. WALTON: Sure.

1 (Brief pause.)

2 THE COURT: We may have to take a break. My
3 computer's not charging.

4 MR. WALTON: Okay.

5 THE COURT: Okay. All right. Start over,
6 Mr. Walton. I got distracted. I apologize.

7 MR. WALTON: Yeah, sure. And so there is a -- so
8 there's these data repositories that their forensic expert Jim
9 Vaughn searched. And it includes --

10 THE COURT: Mm-hmm.

11 MR. WALTON: -- some e-mails and some OneDrive
12 accounts. And he searched them, and he opines that he didn't
13 find any Nalco or Ecolab documents in there.

14 THE COURT: Right.

15 MR. WALTON: And so we, from a commonsense
16 standpoint, just wanted to get access -- if he's going to
17 testify to that, we think we should have access to the same
18 repositories.

19 THE COURT: Right. This is -- this is your Rule 26
20 disclosure --

21 MR. WALTON: Yes.

22 THE COURT: -- motion.

23 MR. WALTON: Yes.

24 THE COURT: Okay.

25 MR. WALTON: And so this is something, if you have a

1 Special Master, I think it would be perfect for a Special
2 Master for, because I'm sure counsel's going to stand up and
3 say that they have deep privacy concerns, and I understand
4 that. So I think this is something that we can work out in
5 terms of the access with the Special Master.

6 Now, what we've also asked for as part of that,
7 Your Honor, is also the local hard drives, to the extent
8 they've been preserved, of the 12 custodians that they picked,
9 because what their expert did is, he searched their OneDrive
10 using very specific search terms, not general terms, very,
11 very specific terms, and he did not search their local hard
12 drives.

13 Now, we have had testimony from at least one
14 high-ranking executive witness who --

15 THE COURT: Let me ask, is that accurate, the way
16 that was described, Ms. Lund?

17 MS. LUND: Well, Your Honor, I'm taken aback,
18 honestly, because this is not an issue they raised. And
19 they've known since we filed our ESI report on February 13th of
20 this year that the custodians' hard drives were not searched by
21 counsel. Mr. Vaughn is really separate. As I understand
22 Rule 37, we're focusing on what counsel did.

23 But with regard to his request for the custodians'
24 hard drives, I'm -- I'm sort of caught flatfooted, because
25 that's just not something that they had asked for in discovery

1 at all, or with regard to their sanctions motion, and it's --
2 it's obviously not connected to Mr. Ridley's laptop, which is
3 the only issue for which the Court has found ChemTreat
4 spoliated evidence.

5 THE COURT: Well, okay. Let me -- let me try to --
6 let me offer this. What I think the theory is is that if -- if
7 we had the ChemTreat computer that Mr. Ridley used, then it --
8 we would be able to look at it and see whether there's evidence
9 that he shared data with others at ChemTreat, right?

10 MR. WALTON: Yes.

11 THE COURT: And since we don't have that and we have
12 to go look at the potential recipients, which you -- which you
13 guys did, Mr. Vaughn did, to some extent, what -- my question
14 is, was it only OneDrive that you searched?

15 MS. LUND: No, Your Honor. To be clear, both
16 Mr. Vaughn and counsel, in response to the extensive discovery
17 requests that plaintiffs served, searched Mr. Ridley's entire
18 ChemTreat e-mail account and his entire ChemTreat OneDrive
19 account.

20 THE COURT: Right.

21 MS. LUND: Mr. Vaughn searched specifically for the
22 broad terms Nalco and Ecolab --

23 THE COURT: Right.

24 MS. LUND: -- across all of that. All of those hits
25 were produced to plaintiffs. It was 2023 hits.

1 THE COURT: And what was he -- where was he
2 searching?

3 MS. LUND: Through all of Mr. Ridley's e-mail --

4 THE COURT: Yeah.

5 MS. LUND: -- and all of Mr. Ridley's OneDrive in
6 full.

7 THE COURT: Right. But then he also searched other
8 repositories, so --

9 MS. LUND: Yes. And, Your Honor, I actually have a
10 demonstrative that I think would show these various accounts,
11 the repositories, and --

12 THE COURT: Okay. Yeah. Let me --

13 MS. LUND: -- who searched them, if that would be
14 helpful.

15 THE COURT: Yeah. Let me see it.

16 MS. LUND: I can use the Elmo.

17 THE COURT: Sure. Or is it on your -- oh, it's
18 paper?

19 MS. LUND: Yeah.

20 THE COURT: Okay. Yeah. Go ahead.

21 MS. LUND: And actually Ms. Mirmira has hard copies
22 she can distribute to everybody so --

23 MR. WALTON: Can I see it first, Your Honor?

24 THE COURT: Sure.

25 (Brief pause.)

1 MR. WALTON: Can I keep this as an exhibit?

2 MS. LUND: Yes. We have hard copies --

3 MR. WALTON: Okay.

4 MS. LUND: -- as well as putting it on the Elmo.

5 MS. MIRMIRA: Your Honor, may I approach to give you
6 a hard copy?

7 THE COURT: Mm-hmm. Thank you.

8 MS. LUND: And, Your Honor, I don't know if there is
9 something that needs to turn on the monitors. Everything is
10 on --

11 THE COURT: Ms. Hinton is working on it, I think.

12 (Brief pause.)

13 THE COURT: Still having issues?

14 MS. LUND: We have -- I think since everybody has a
15 hard copy --

16 THE COURT: That's fine, yep.

17 MS. LUND: -- we can just proceed with that.

18 So essentially you can see here we've tried to
19 visually represent what these repositories are and how the
20 flow of information connects to the laptop from which the ESI
21 was lost, and you'll see that's at the top of the pyramid. It
22 was in Mr. Ridley's possession from July 12th of 2021 through
23 February 20th of 2022. So that's time the time period we're
24 focused on, because the purpose of Rule 37, obviously, is to
25 have measures no greater than to remedy the prejudice.

1 And so then the question is, what is the potential
2 prejudice that was suffered here. And as Your Honor found,
3 the question is, what, if anything, Mr. Ridley did with files
4 that -- after he took them, allegedly, from plaintiffs. And
5 we don't know whether they were stored on his laptop, but we
6 do know that there are only a very limited number of ways that
7 any information could flow from that laptop out into the wider
8 ChemTreat system.

9 THE COURT: Mm-hmm.

10 MS. LUND: And so you'll see one of those ways is
11 ChemTreat's e-mail that was searched by counsel and by
12 Mr. Vaughn.

13 THE COURT: So let me -- just to make sure
14 I understand --

15 MS. LUND: Yes.

16 THE COURT: -- anything on here with the blue circle
17 is what -- no. Tell -- did you search everything on here --
18 represented on here?

19 MS. LUND: So if you can see, everything that has a
20 blue circle was searched by ChemTreat's counsel in the course
21 of discovery.

22 THE COURT: Okay.

23 MS. LUND: And we detailed the kinds of searches that
24 we did in our ESI report, which is Docket Entry 143.

25 THE COURT: Yep.

1 MS. LUND: Everything with a red circle was searched
2 by Mr. Vaughn. So you'll see sometimes there's an overlap
3 where both Mr. Vaughn and counsel searched a particular thing.

4 And then there are several repositories that were
5 not searched by ChemTreat's counsel or Mr. Vaughn because they
6 are not in ChemTreat's possession. Those are Ridley's
7 personal e-mail account and text messages that Mr. Ridley sent
8 to certain key custodians, the three people in his chain of
9 contain, who were deposed by plaintiffs, as well as Tyler
10 Bates, who Your Honor knows features in plaintiffs'
11 allegations with regard to their common law state claims. And
12 so both those text messages and the personal e-mail were
13 searched by Mr. Pope in response to plaintiffs' discovery
14 requests.

15 So when -- when plaintiffs are talking -- when
16 Mr. Walton says to you, "We need to search all of these
17 repositories," you can see two things. First, we're not
18 talking about a few e-mails and a few OneDrives. We are
19 literally talking about thousands -- hundreds of thousands of
20 documents. Just the material that ChemTreat searched,
21 represented by the blue circles, is over 600,000 documents.
22 And Mr. Vaughn searched more broadly.

23 So plaintiffs are essentially asking for a complete
24 reopening of discovery and a very broad-based discovery that
25 they didn't even seek during the discovery process. And

1 what's particularly striking about their request is that they
2 are now saying that these hard drives or the hard drives or
3 the computers that were used by various ChemTreat custodians
4 should also be imaged and produced to them, which, again, is
5 not something they sought in discovery, although they had
6 sufficient time, more than sufficient time. And there's no
7 connection. Essentially these are remote employees.
8 Mr. Cissell, for example, works out of Illinois, which
9 obviously is not next door to Mr. Ridley in Tennessee.

10 THE COURT: Mm-hmm.

11 MS. LUND: And so there's no way the information
12 could have moved through ChemTreat's systems from Mr. Ridley's
13 laptop to Mr. Cissell's laptop unless it passed through one of
14 these gatekeeping functions, which would be the ChemTreat
15 e-mail --

16 THE COURT: Mr. Walton, do you disagree with that?
17 Is there any other way to get it from --

18 MR. WALTON: Yes, I very much disagree with that.

19 THE COURT: Why? Why?

20 MR. WALTON: Because you could do it through USB
21 drives, which is what Mr. Ridley did in this case.

22 THE COURT: Right. But other than what we've talked
23 about, is there any evidence that there were USB drives --

24 MR. WALTON: Well, there is no --

25 THE COURT: -- going between Tennessee and Ohio?

1 MR. WALTON: -- there is no evidence -- we don't have
2 the computer, because his computer is wiped. So that --

3 THE COURT: I know, but I'm -- really simple
4 question.

5 MR. WALTON: Yes.

6 THE COURT: I know we can dream up things.

7 MR. WALTON: Yes, sir.

8 THE COURT: I mean, maybe Ridley was, you know,
9 having dinner with Kim Jong Un at times.

10 MR. WALTON: Yeah.

11 THE COURT: We don't -- we don't know that, either.
12 I doubt it, but...

13 MR. WALTON: Yeah.

14 THE COURT: Other than just speculating, is there any
15 evidence that there were USB -- physical USB -- this -- I mean,
16 I do agree with Ms. Lund, this seems like the very most likely
17 way this sort of information gets from Mr. Ridley to another
18 person, right?

19 MR. WALTON: This is -- this is why I disagree,
20 because there are several USB drives that, according to their
21 CrowdStrike logs, were attached to his ChemTreat computer.
22 Okay? And so we do have evidence that there was other USB
23 drives that nobody's accounted for that were attached to his
24 computer.

25 And I respectfully disagree with Your Honor. If you

1 wanted to transfer documents and hide it, you would do it off
2 of the network, so you wouldn't do it in the ways that -- that
3 you would do it here, you would do it by USB drives or you
4 would do it by using your computer when it's not connected to
5 the ChemTreat VPN, and doing it through personal account, like
6 iCloud, Dropbox, stuff like that.

7 And so I disagree, because, also, all of the
8 external hard drives should have been searched in discovery.
9 So we did ask for that. They -- they have conceded that these
10 12 individuals are custodians, but they have intentionally not
11 searched their local drives, even though that's where we have
12 testimony these people keep most of their information. So --

13 THE COURT: And you're talking about the group under
14 "Other Salesforce Employees"?

15 MR. WALTON: Yes, on the individual --

16 THE COURT: That's -- those are the ones you're
17 really worried about?

18 MR. WALTON: Yes, sir. It's these here, it's the
19 individual custodians and the other sales force employees.
20 Their local hard drives should have been searched already in
21 order to respond to our discovery request, because they have
22 conceded that they are custodians. But they -- they've
23 intentionally not searched those local hard drives. And that's
24 what we're asking for as part of the sanction under 37(e)(1)
25 against ChemTreat.

1 THE COURT: Okay. Let's hear you on that, Ms. Lund.

2 MS. LUND: Your Honor, just to be clear, we have not
3 conceded that those other sales force employees are relevant
4 custodians. We actually cast an incredibly broad net because
5 we knew at the outset that we had had this unfortunate incident
6 where the receptionist had delivered the computer to the wrong
7 place and it got forensically wiped, and so we immediately took
8 steps to try to cure that as much as we could and that is why
9 we created the CrowdStrike log. That's not information that
10 was preexisting that plaintiffs could acquire in discovery.

11 THE COURT: Right.

12 MS. LUND: We created it from data that was
13 available. In the same way, we immediately had Mr. Vaughn see
14 if anything was recoverable from that laptop. Unfortunately it
15 was not. The other step that we took is that we cast as broad
16 a net as possible. And if you look at our ESI report at
17 Document Entry 143, you'll see that we specify that certain
18 custodians are people who have relevant information and other
19 people are people who just may have relevant information, may
20 have interacted with Mr. Ridley.

21 And so, you know, the notion that all of these
22 individuals are -- are custodians for whom a detailed
23 deep-dive search is justified when it could have been
24 performed during discovery and when plaintiffs have not
25 identified anything other than this, you know, hypothetical

1 speculation as to, "Well, maybe Mr. Ridley copied it onto a
2 USB and then maybe he sent it to somebody else who --" who
3 then what? Did they load it onto the OneDrive? The OneDrives
4 have also been searched. Did they --

5 THE COURT: Mm-hmm.

6 MS. LUND: -- e-mail it to somebody? The e-mails
7 have also been searched. Did they communicate about it via
8 text? The texts have been searched and produced to plaintiffs.

9 I mean, at the end of the day what I hear from
10 plaintiffs is that they want to reopen discovery, they want to
11 take this very narrow remedy that Rule 37 permits --

12 THE COURT: Mm-hmm.

13 MS. LUND: -- which specifically provides that you
14 have measures no greater than necessary to cure the prejudice,
15 and use that to just open wide the doors of discovery when we
16 have already gone through that process for over a year, they
17 have served literally, I believe, more than 100 requests for
18 production, and we were, before this hearing, just weeks from
19 trial. And so I think that is a fundamental mismatch with the
20 goal of Rule 37 and the targeted approach that Rule 37 focuses
21 on, what is curative as to the ESI and the laptop, not what is
22 plaintiffs' dream wish list of discovery they wish they had
23 gotten during the process.

24 THE COURT: Okay. Who -- who are these -- tell me
25 about these employees, "Other Salesforce Employees."

1 MS. LUND: Yes. So essentially, Your Honor, as
2 I said at the outset, we cast a very broad net. We, you know,
3 captured the information of people who we understood Mr. Ridley
4 knew just in the industry. As you probably have seen from our
5 briefing, the water treatment industry is a relatively tight
6 industry. People run into each other constantly at trade --

7 THE COURT: Mm-hmm.

8 MS. LUND: -- fairs and so on, and there's a lot of
9 kind of touch bases, you know, LinkedIn and so on. And so
10 individuals who Mr. Ridley said, "You know, from my 20 years at
11 Ecolab, I know this individual, and he's at ChemTreat," some of
12 those people were put on our list as well. And that's why
13 we've distinguished between the individual custodians, who are
14 the people in his chain of command, versus the custodial
15 groups.

16 And the only person who Mr. Ridley actually had
17 close contact with from among these other sales force
18 employees is David Ellis. That was the individual who he came
19 in to replace. And there was -- Mr. Ellis was retiring and so
20 there was an overlap in which Mr. Ellis was essentially his
21 mentor and introduced him to the existing customers that he
22 was taking over. And so Mr. Ellis's e-mail has been searched
23 both by ChemTreat's counsel in response to discovery requests
24 and by Mr. Vaughn in the context of his search. We do not
25 have Mr. Ellis's OneDrive because he retired some months

1 before plaintiffs notified us that they thought that there had
2 been any misappropriation by Mr. Ridley. So that is just not
3 available.

4 THE COURT: Mm-hmm. And how did you come up with
5 these other names?

6 MS. LUND: As I said, Your Honor, it was based on
7 information that we obtained from Mr. Ridley, just factually,
8 who were his friends and contacts in the industry. So just as
9 an example, you know, some of these people were people who were
10 technical workers, who go and actually test the -- the water
11 quality --

12 THE COURT: Mm-hmm.

13 MS. LUND: -- but they were people that Mr. Ridley
14 knew from his time at Ecolab or from his time in the industry.
15 And, you know, at that time we didn't know who might he be
16 communicating with. Plaintiffs had sent us this letter saying
17 that they were very concerned about the extensive number of
18 documents. So we cast, honestly, the widest net I've seen in,
19 you know, over two decades of litigation, just to make sure
20 that we were sweeping everything in because of the unfortunate
21 loss of the laptop's ESI.

22 THE COURT: Mm-hmm.

23 MS. LUND: But, you know, we do have all of the
24 e-mails between these individuals, and all of them have been
25 searched in response to plaintiffs' discovery requests by

1 counsel, and that search would include any e-mail that
2 Mr. Ridley sent to any of those custodians that included the
3 words Nalco or Ecolab, not just in the text but in the metadata
4 as well.

5 THE COURT: Okay. What about these flash drives that
6 Mr. Walton raised? What --

7 MS. LUND: Well, Your Honor, Mr. Walton and
8 plaintiffs in general had the opportunity to inquire of every
9 ChemTreat employee that they deposed whether these theories
10 that Mr. Walton just put before you with regard to flash drives
11 or some kind of cloud drive or some kind of Dropbox account had
12 been used. And I don't believe that that question was actually
13 asked of, for example, Mr. Cissell. And so there's no evidence
14 on that. But, again, I think about how do we get to
15 ChemTreat's systems. We have two standalone computers, for
16 example, Mr. Ridley's computer and Mr. Cissell's computer.
17 Even if Mr. Ridley put information from his computer onto a USB
18 drive, mailed it to Mr. Cissell, Mr. Cissell stuck that USB
19 drive into his computer, where would it go? It would have to
20 go either through his e-mail if he was going to use it or
21 through the OneDrive if he was going to use it. And if he was
22 going to use it --

23 THE COURT: Why would it not -- why could it not be
24 locally saved?

25 MS. LUND: Well, because -- I mean, the document

1 itself could be saved, but it couldn't be used unless it went
2 beyond a laptop, right? For example, if you used it with a
3 customer, although there's no evidence of any customer use, as
4 plaintiffs concede, or if you moved it up to a OneDrive so that
5 the, you know, sales force would use it, those were also
6 searched. And so we would have these, you know, electronic
7 crumbs of information that would let us know whether or not
8 that document transfer had occurred. But, you know, there's
9 no --

10 THE COURT: So tell me the -- what -- what was
11 Alcorn's job?

12 MS. LUND: So Mr. Alcorn is the vice president. He
13 is in charge of all sales --

14 THE COURT: Mm-hmm.

15 MS. LUND: -- in North America. He is the ultimate
16 supervisor of Mr. Ridley.

17 THE COURT: All right. Were -- how many of these
18 were deposited?

19 MS. LUND: So Mr. Alcorn --

20 THE COURT: Mm-hmm.

21 MS. LUND: -- Mr. Leavell, and Mr. Cissell were all
22 deposed.

23 THE COURT: Okay.

24 MS. LUND: That's his chain of command. And it
25 essentially goes from the top down. Mr. --

1 THE COURT: Okay.

2 MS. LUND: -- Alcorn is in charge of all North
3 American sales, Mr. Leavell is in charge of sales for Eastern
4 North America and Canada, and then Mr. Cissell was the
5 conference leader at the time for the Southeast. He's now --
6 it's the Central conference.

7 THE COURT: Okay. What about the "Other Salesforce
8 Employees" box?

9 MS. LUND: No, none of those individuals were
10 d posed. Plaintiffs did not request depositions of any of
11 these individuals.

12 THE COURT: And give me an idea of -- you told --
13 essentially Mr. Ridley replaced Mr. Ellis, right?

14 MS. LUND: That is correct.

15 THE COURT: So who are these other folks?

16 MS. LUND: So Albert DeNunzio was another sales
17 individual who worked in Central Tennessee. It's my
18 understanding that Mr. Ridley knew him in a social function.

19 Mr. Harmon was a technical worker in Northern
20 Alabama. And you're testing my memory here, Your Honor, but
21 I believe that he was an individual who was RIF'd, laid off,
22 from Nalco.

23 THE COURT: But is it fair to say that all or most of
24 these are salespeople? Is that --

25 MS. LUND: They all work on the sales side. Like

1 I said, there are --

2 THE COURT: Okay.

3 MS. LUND: -- some technical workers such as
4 Mr. Harmon. But that is correct, Your Honor, generally they --
5 they are all involved in sales.

6 THE COURT: Okay. So the rub here is whether they
7 had hard drives, right? Is that what you did?

8 MS. LUND: (Moving head up and down.)

9 THE COURT: Okay.

10 MS. LUND: Right. And, I mean, as Your Honor said,
11 we can certainly speculate about all the different ways in
12 which information could flow. But plaintiffs had a full --
13 more than a full year of discovery to track that down through
14 sources other than the laptop ESI, sources other than
15 Mr. Ridley who they consider incredible, and they had the
16 opportunity to depose these individuals, ask about them,
17 seek --

18 THE COURT: Yeah.

19 MS. LUND: -- you know, to expand the custodians
20 that -- we filed the ESI report specifically at plaintiffs'
21 request after a hearing in front of Magistrate Judge Lee on
22 February 3rd, and so, you know, this was a contested
23 proceeding. If they had any concerns about the scope of those
24 custodians and the scope of what we were searching, they could
25 have said so. And in fact they did come back and raise certain

1 issues about the searches that they presented to Magistrate
2 Judge Lee --

3 THE COURT: Right.

4 MS. LUND: -- and she rejected those.

5 THE COURT: I know, and I'm familiar with that, I --
6 Okay. Just -- we're talking about sanctions, right?

7 MS. LUND: Yes, Your Honor.

8 THE COURT: This is a little different, little
9 different. So... Okay. I think I understand.

10 Mr. Pope, do you want to add anything to this
11 discussion?

12 MS. LUND: Oh, actually if I can just add one thing,
13 Your Honor --

14 THE COURT: Sure, mm-hmm.

15 MS. LUND: -- because I wasn't sure if Mr. Walton was
16 done presenting what the plaintiffs had requested, but I did
17 hear him talk about sort of a trail of breadcrumbs, and I did
18 want to flag that that is consistent with our understanding
19 that, you know, to the extent the Special Master gets involved,
20 that the appropriate way to do that is to have an incremental
21 and iterative approach, such that you would begin with sort of
22 the first stage, where could this ESI go, well, it could go to
23 Mr. Ridley's e-mail or Mr. Ridley's OneDrive, and then if any
24 evidence was found on that or any evidence was found on his
25 wife's laptop of some transfer outside --

1 THE COURT: Right.

2 MS. LUND: -- of sort of the ChemTreat universe, that
3 then the Special Master could say what is the next level. But
4 what we don't think is appropriate is to start as broad as
5 possible and narrow down. That seems inconsistent both with
6 Rule 37 and with best practices for forensic analysis.

7 THE COURT: Seems a lot faster, though, doesn't it?

8 MS. LUND: It doesn't, actually, because the problem
9 is, as I said -- and you can see this in --

10 THE COURT: For me, not for you.

11 (Laughter.)

12 MS. LUND: Well -- well, but for the Special Master,
13 unfortunately, because if you -- if you look at our ESI report
14 you'll see the -- you know, like I said, it's over 600,000
15 documents that we searched. And if you add in the repositories
16 that Mr. Vaughn looked at as well, we're talking, you know,
17 some number greater than that. And so even if you have a very
18 tight set of search terms; although, plaintiffs have not, you
19 know, identified, for example, what the alleged trade secret
20 information is such that we could search those phrases, that's
21 still an enormous amount of time --

22 THE COURT: Do we know how much data that is?

23 MS. LUND: -- for the Special Master to review.

24 Pardon?

25 THE COURT: Do we know how much data it is? Can we

1 measure it?

2 MS. LUND: Oh, you know what? It's --

3 THE COURT: Ballpark?

4 MS. LUND: I'm afraid I have this written down and I
5 don't have it anymore. I wanted to say it was, like, 30
6 terabytes, but I could be completely wrong with that.

7 THE COURT: Thirty?

8 MS. LUND: Yes. And if --

9 THE COURT: Okay.

10 MS. LUND: -- Your Honor is interested, we could
11 certainly get that information for you.

12 THE COURT: Is that a lot? I'm kidding.

13 (Laughter.)

14 MS. LUND: Again, that's -- this is outside my area
15 of expertise. And so what I think of is in the number of files
16 that have to be searched, because as an attorney what you do is
17 you put eyes on documents, right? And what a Special Master --

18 THE COURT: Yeah.

19 MS. LUND: -- would do is put eyes on documents. And
20 he would need to put eyes on whatever the hits are of --

21 THE COURT: Okay.

22 MS. LUND: -- you know, half a million to a million
23 documents.

24 THE COURT: Okay. Anybody else on this issue?

25 MS. LUND: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. WALTON: May I respond to a couple of things,
3 Your Honor --

4 THE COURT: Absolutely. Mm-hmm.

5 MR. WALTON: -- or would you like to move on?

6 THE COURT: No, no. Let's hear it.

7 MR. WALTON: Okay. So, first of all, if you were
8 trying to hide what you were doing, you would trade -- you
9 would not do anything on the network that could be tracked, you
10 would do it through personal e-mail, through personal cloud
11 accounts, you'd do it through USB drives. And we have evidence
12 that he was doing tricky stuff like this. In fact, he got
13 fired --

14 THE COURT: Mm-hmm.

15 MR. WALTON: -- for sending himself a personal
16 e-mail.

17 So Steve Leavell, who works under John Alcorn, who
18 is a top executive, says most people just save things to their
19 local hard drive. That's the key repository of information
20 just for basic discovery, not even apart from sanctions.
21 Okay? But now we're asking for sanctions, that -- those --
22 the hard drives for all the custodians that --

23 THE COURT: Let me just reiterate, discovery's
24 closed.

25 MR. WALTON: Yeah, absolutely. Well --

1 THE COURT: Discovery is closed.

2 MR. WALTON: -- I'm talking about sanctions now. I'm
3 talking about a sanction now.

4 THE COURT: Okay.

5 MR. WALTON: The -- because the computer is gone,
6 which is the Number 1 receptacle --

7 THE COURT: Mm-hmm.

8 MR. WALTON: -- because the WD drive's gone, which is
9 the Number 2 receptacle, right, the most likely place that this
10 information would be would be on the local hard drives for the
11 12 custodians that they picked and -- because that's where
12 everybody saves their information.

13 And when their expert ran his search terms and when
14 he ran them on the OneDrive and the e-mail, he didn't use
15 basic terms like Nalco, he didn't use basic terms like Ecolab.
16 When he searched Ridley's stuff, he used those terms. But
17 when he searched on all the red here, he didn't use basic
18 terms like Nalco and Ecolab. Why not? Because there's Nalco
19 and Ecolab stuff on there. And that doesn't even include the
20 local hard drives.

21 So there is two issues here. One is—and this deals
22 with the objection that we filed with Your Honor—everything
23 that is circled in red here we should get access to to rebut
24 Jim Vaughn's opinion. That's separate from the sanctions. As
25 part of the sanctions, then, Your Honor, we should get access

1 to all the local hard drives for the 12 custodians that they
2 identified, then we should search them per a protocol that we
3 could work out with the Special Master.

4 THE COURT: Okay.

5 MR. WALTON: Okay. I can move on to my --

6 THE COURT: What else are you asking for?

7 MR. WALTON: All right. So you've heard about these
8 CrowdStrike logs. Okay? And we submitted a report from
9 Mr. Lieb. And Mr. Lieb, if you want, can pull up his computer
10 and show you these if you really want to see them. But we got
11 these CrowdStrike logs, which are 12 million lines of data.
12 All right? And we got them in a format that we couldn't
13 automatically index or search them.

14 We've done some research on CrowdStrike, and that
15 CrowdStrike data was made to be read by a software program, by
16 a CrowdStrike program. So as part of our sanctions here,
17 Your Honor, we would like to have access to ChemTreat's
18 CrowdStrike software program, or perhaps the Special Master
19 could, so we could search that 12 million lines of data that
20 were never meant to be read by humans. Okay?

21 Also on --

22 THE COURT: What were they given? Tell -- explain
23 it. Explain to me what -- what -- give me an example of a
24 search you'd like to run, and tell me how it would work.

25 MR. WALTON: Well, on the CrowdStrike, we would like

1 to search for Nalco, we would like to search for Ecolab, we
2 would like to search for documents that were deleted, we would
3 like to search for programs that he used, we would like to
4 search for other CrowdStrike logs. And I can get into that in
5 a second, Your Honor. That's a little bit of a tangential
6 issue, but I can get into that.

7 We also understand that the CrowdStrike, depending
8 on what type of CrowdStrike software you have, you can
9 identify a specific USB device and run, looking for that
10 specific USB device, through all the CrowdStrike data and
11 issue a report just -- just like that. (Indicating.) And we
12 would like that, too.

13 So, you know, part of the problem with the
14 CrowdStrike, Your Honor, is, the way the CrowdStrike works is,
15 it does a hash value, if Your Honor knows what a hash value
16 is --

17 THE COURT: Mm-hmm.

18 MR. WALTON: -- it's like a digital fingerprint of a
19 digital document. And it's not a forensic tool. It's a
20 malware detection tool. And what it does is, when these files
21 come in, the first thing that CrowdStrike does is says, "Is
22 this file capable of having executable malware code in it?"
23 Like, a pdf, for example, is used a lot by hackers to ingest
24 code.

25 THE COURT: Mm-hmm.

1 MR. WALTON: And then if it's like that type document
2 which allows executable code, okay, it then takes an image of
3 that document and it assigns a hash value to it, which is like
4 a digital fingerprint, and it cleans -- and it checks that
5 document. If that document is then cleared, okay, it goes into
6 a list of this massive CrowdStrike log that, my understanding,
7 is searchable, that then it knows all those documents are
8 clear. So if those documents ever pop up on USB again,
9 CrowdStrike doesn't register that document, which is why
10 I believe we have numerous USB drives that are attached to the
11 ChemTreat computer and there's no file activity afterwards,
12 which doesn't make sense, because who attaches a USB drive to a
13 computer, then doesn't do anything with it? Okay? But the
14 reason there's no file activity afterwards is because --

15 THE COURT: Let me just --

16 MR. WALTON: Yeah.

17 THE COURT: I know this is a little off-topic, but --

18 MR. WALTON: Yeah.

19 THE COURT: -- the context of this is, you didn't
20 lose any customers.

21 MR. WALTON: No. Absolutely right. But --

22 THE COURT: So they -- how much could they have done
23 with it?

24 MR. WALTON: Well, they -- they could have our whole
25 playbook sitting there, thousands and thousands of documents.

1 It's like the entire way that we do business.

2 On that WD drive was exponentially more than what
3 was on the LaCie drive. That's why our misappropriation case
4 is much more about the LaCie drive -- I'm sorry, much more
5 about the WD drive than it is the LaCie drive. Okay? The
6 LaCie drive and the OneDrive and all that just relates to our
7 sabotage claim. That's different.

8 So when you're really talking about the
9 misappropriation now, it's the LaCie drive --

10 THE COURT: Mm-hmm.

11 MR. WALTON: -- I'm sorry, it's the WD drive. I keep
12 misspeaking, Your Honor.

13 THE COURT: That's all right. I understand what
14 you're saying.

15 MR. WALTON: And so that had exponentially more files
16 than the LaCie drive, because it had multiple backups of his
17 Nalco computer and that includes everything. So they could
18 have our whole playbook.

19 I'm not sure if you're a football fan, Your Honor,
20 but they could -- it's like -- it's like the Eagles getting,
21 you know, Washington Redskins' playbook. Okay? And it's --

22 THE COURT: And not using it, though.

23 MR. WALTON: Well, but you don't know if they're
24 using it, because -- because the main receptacles that I have
25 to -- to show use --

1 THE COURT: Well, wait a minute. So I assume
2 ultimately the way they would use it would result in a loss of
3 customers, right? Isn't that the whole -- isn't that the way
4 you score in this game?

5 MR. WALTON: Well, it could also result in the loss
6 of employees. It could also result --

7 THE COURT: Is there any evidence of that?

8 MR. WALTON: Excuse me? I'm sorry.

9 THE COURT: Is there any evidence of that?

10 MR. WALTON: Yeah. We've been losing employees all
11 over the place. Can -- can we connect them directly to what
12 Ridley took? No, because things have been wiped and deleted.
13 It's -- it's very difficult for us to show use.

14 And I saw Your Honor's opinion yesterday, and I know
15 what Your Honor's thinking about use. And we might
16 respectfully agree to disagree. But assume that we have to
17 show use. The most important thing that would show use would
18 be his ChemTreat computer. That's gone. The second most
19 important thing that would show use is his WD drive. That's
20 gone. Okay? Then there's also some USB drives with deleted
21 information. Now we find out for the first time that he
22 actually did use his wife's computer for work. Okay?

23 So I understand where Your Honor's coming from about
24 showing use --

25 THE COURT: Well, I'm trying -- I'm trying to be --

1 you know, as I think about sanctions, I'm trying to be
2 reasonable, right?

3 MR. WALTON: Yes, sir.

4 THE COURT: So it's -- this would be a much -- the
5 sanctions calculus, I think, would be much different if you
6 gave me a list of customers and you had lost \$25 million in
7 revenue, right?

8 MR. WALTON: Yes.

9 THE COURT: Then we'd really start digging. I don't
10 know how hard to dig, though, when that number's zero.

11 MR. WALTON: Yeah, but, you know, the -- you know,
12 maybe part of this lawsuit stopped that, and maybe part of this
13 lawsuit that we get at the end of the day is a permanent
14 injunction from the Court that says that if they find this
15 information, that they can't use it, they have to return it,
16 that they're not allowed to --

17 THE COURT: You'd probably agree to that today, won't
18 you?

19 MS. MIRMIRA: (Moving head up and down.)

20 THE COURT: Anybody not agree with that today?

21 MR. WALTON: I mean, if they would agree to a
22 permanent injunction on -- on that, Your Honor, that would --
23 that, you know, might solve a piece of this. But, again, we
24 would still want to know what we don't know and do a little bit
25 of digging to make sure that they don't have our corporate

1 playbook --

2 THE COURT: Yeah.

3 MR. WALTON: -- because they can be sitting on it,
4 because it's more than just -- it's more than just losing
5 customers -- I'm sorry, Your Honor.

6 THE COURT: That's okay. Happens every hearing.

7 MR. WALTON: I'm half-Italian, so I talk with my
8 hands.

9 It's more than just losing customers. It's they're
10 seeing the entire way that we do business, everything from
11 financials to the way we pay our people to what territories
12 were, customers.

13 THE COURT: Well, Ridley -- we think Ridley did.

14 MR. WALTON: Ridley did, but he took -- he took --

15 THE COURT: But he saw that before he left.

16 MR. WALTON: But he took multiple backups of his
17 computer that had much more than just his information.

18 THE COURT: I understand. I understand. But -- but
19 we don't know that it went any further.

20 MR. WALTON: Well, yeah, and we don't know because
21 that's wiped.

22 THE COURT: Mm-hmm.

23 MR. WALTON: Okay?

24 THE COURT: I understand.

25 MR. WALTON: And so where we started down this road

1 was, as part of our sanction under 37(b) -- I keep saying
2 (b)(1), but I mean (e)(1) --

3 THE COURT: Yep.

4 MR. WALTON: -- is that we would get access to their
5 CrowdStrike software so we could properly search the
6 CrowdStrike data.

7 THE COURT: Okay. And that's related to the loss
8 of -- we're still on the WD drive and the -- and the ChemTreat
9 computer.

10 MR. WALTON: Yes, sir.

11 THE COURT: Okay.

12 MR. WALTON: Yes, sir.

13 THE COURT: All right. So who wants to take that?
14 CrowdStrike.

15 MS. LUND: Your Honor --

16 THE COURT: Mm-hmm.

17 MS. LUND: -- CrowdStrike is commercially available
18 third-party software. A license is available. My
19 understanding is, it costs a few hundred dollars a month.

20 Plaintiffs, who have, you know, chosen to litigate
21 this case and have chosen to litigate this case in an
22 aggressive manner that has really driven up attorneys' fees,
23 certainly could have afforded to pay for Mr. Lieb to have that
24 access and to simply pay for a handful of months to search the
25 CrowdStrike log that we've provided. It sounds, as I

1 understand what Mr. Walton just said, as if they --

2 THE COURT: Tell me what -- is the log an Excel
3 spreadsheet or something? Is that essentially --

4 MS. LUND: So here's the problem, Your Honor. A
5 smaller log would be able to come out in an Excel spreadsheet,
6 but because we gave plaintiffs as much data as possible --

7 THE COURT: Right.

8 MS. LUND: -- literally every field that could be
9 produced from this software was provided to them, it is
10 12 million fields. And so as a result you have to open it, you
11 know, in a -- something like a Notepad and then convert it into
12 something else. And so, you know --

13 THE COURT: But they have that?

14 MS. LUND: They have it. They've had that since the
15 end of December of last year. And their expert has had full
16 access to that. He has searched terms such as Nalco on it. So
17 I'm not entirely sure why they're saying they need access to
18 that third-party software in order to conduct further searches.

19 And then I heard Mr. Walton say that now they
20 actually want direct access to ChemTreat's system so that they
21 can create new CrowdStrike logs and search those or perhaps
22 just create new CrowdStrike searches. And for that I think
23 it's important to understand what the CrowdStrike software is.

24 This is, as I believe Mr. Walton alluded to, sort of
25 a software that is intended to prevent, you know, malware or

1 threats, and it just runs in the background --

2 THE COURT: Mm-hmm.

3 MS. LUND: -- and it basically records if something
4 is connected that is a potential threat, so that if you later
5 discover an infection or intrusion into your system, you can
6 track that back. But it is not something where logs are
7 constantly being produced. It is only information that can be
8 queried. And because of the enormous amount of information it
9 creates, it is information that is constantly refreshing. And
10 so there is, you know, as I understand it -- although,
11 plaintiffs did not request this in discovery and so this is my
12 best understanding --

13 THE COURT: Mm-hmm.

14 MS. LUND: -- Your Honor, there is only, you know, a
15 certain trailing period. And at this point, given that
16 plaintiffs are asking about events that may have occurred
17 between July 12th of 2021 and February 28th of 2022 and we are
18 now here on August 10th of 2023, I honestly don't know if any
19 of the data that they say they want is even available anymore,
20 because they just -- they didn't ask for that in discovery.

21 I do want to, if I can, Your Honor, just briefly
22 respond to a few of the points that Mr. Walton made.

23 THE COURT: Mm-hmm.

24 MS. LUND: First, you know, with regard to this
25 question of use, as Your Honor indicated in the order yesterday

1 and then again today, use would -- it would be visible in some
2 place other than just Mr. Ridley's laptop, right? To have some
3 kind of commercial exploitation, you have to exploit it, and
4 that leaves trails outside of just the ESI of the laptop.

5 And Mr. Walton has now speculated, "Well, maybe they
6 have this and they're holding onto it and maybe they've used
7 it to get our employees."

8 Again, they had a full discovery period in which
9 they could have said, you know, "Here are the employees that
10 we have lost that overlap with information that we believe was
11 taken from us, and we want discovery on them. We want to, you
12 know, depose these individuals."

13 They didn't do that. Now, I will tell you that they
14 have engaged in a -- a very dedicated course of litigation
15 against ChemTreat and employees that ChemTreat has hired.
16 This is now one of five lawsuits that have been brought --
17 well, six with the one that they had to dismiss when they
18 found it could not be substantiated at all, that they've
19 brought against these employees. And we view it, honestly, as
20 sort of a campaign of terror against the employees.

21 If you looked at some of the deposition testimony we
22 attached, both Ms. Mackie and Mr. DeMarco made it clear that
23 Ecolab frowns on or outright prohibits individuals from
24 seeking separate employment or employment other than
25 Ecolab/Nalco. And so the notion that they are going to

1 leverage what is the freedom of every at-will employee to
2 choose a superior or different employee -- employer, and to
3 say, "From that, we should now be able to conduct this
4 broad-based search --

5 THE COURT: Mm-hmm.

6 MS. LUND: "-- of everything in ChemTreat's accounts"
7 because some of Nalco/Ecolab's employees choose to come to
8 ChemTreat, I mean, again, that just has nothing to do with
9 Rule 37(e) at all.

10 And then finally I did want to flag this issue of
11 the Nalco/Ecolab search, because if I understood Mr. Walton
12 correctly, he said, "Well, Mr. Vaughn didn't search that and
13 that's because those -- that information would be there."
14 Just to be clear --

15 THE COURT: Of everybody but Mr. Ridley, right?

16 MS. LUND: Right. Yes. So just to be clear, he did
17 search Nalco/Ecolab in Mr. Ridley's account, but with regard to
18 everybody else, I mean, these are two major competitors in a
19 small field and so there is -- the words Nalco and Ecolab
20 appear all over, because of trade fairs, industry events, you
21 know, a hiring pipeline --

22 THE COURT: Mm-hmm.

23 MS. LUND: -- competitive intelligence where you say
24 things like, "Here is an automatic Google report where I get a
25 news report every time there's an article about one of my

1 competitors." Those are all there. You also have when you go
2 up for a bid in an RFP process, "Who are we competing against?
3 I've heard that Nalco's going to bid," right?

4 THE COURT: Mm-hmm.

5 MS. LUND: And so as you will see again in our ESI
6 report, again, Docket 143, we detailed that with regard to all
7 of the other e-mails that we searched, we did use Nalco/Ecolab
8 in association with other terms, because obviously if you just
9 use Nalco and Ecolab you're going to get their material data
10 safety sheets, which, I mean, those are not -- those are not
11 trade secrets.

12 THE COURT: Mm-hmm.

13 MS. LUND: And so, again, that is -- that is ground
14 that has been plowed already in the course of discovery based
15 on their very broad discovery requests to us. So this is
16 not -- this is not -- what Mr. Vaughn did is not the be-all and
17 end-all, it is really just a very small piece of the overall
18 scope of what has been provided to plaintiffs.

19 And as I believe I indicated to Your Honor,
20 Mr. Vaughn produced all of his hits to plaintiffs. That was
21 2023 documents. But in addition to that, in the course of
22 discovery, we produced, for the, you know, seven months that
23 Mr. Ridley was employed by us, a full -- I'm looking for the
24 number here -- I believe it was 1336 documents. And just to
25 give you a contrast, plaintiffs produced just over 500

1 documents for, you know, the entire period that Mr. Ridley
2 worked there, which was just over two decades --

3 THE COURT: Mm-hmm.

4 MS. LUND: -- and despite claiming that they have
5 16,000 trade secrets that were stolen.

6 So I think we have engaged in very thorough
7 discovery efforts. And I view the goal of Rule 37(e)(1) as
8 essentially trying to fill any evidentiary gaps that remain.
9 And the question really is whether plaintiffs have, after this
10 enormous discovery effort, identified any evidentiary gaps
11 that are actually specifically tied to the ESI that could have
12 been on Mr. Ridley's laptop as opposed to some other wish list
13 of information that they would like with regard to what other
14 ChemTreat employees might be doing, what other information
15 ChemTreat might have.

16 THE COURT: Okay. Thank you.

17 Yes, sir.

18 MR. WALTON: Thank you, Your Honor.

19 Just about the CrowdStrike, what we're trying to do
20 is, we just want to have an even playing field. Their expert
21 got to use the software that was designed to read 12 million
22 lines of data and search it easier. We had -- I can put
23 Mr. Lieb on the stand. He broke three forensic -- two or
24 three forensic tools trying to search this. Okay? Broke
25 forensic tools. He had to spend hours using -- have you ever

1 seen the Microsoft Notepad application --

2 THE COURT: Mm-hmm.

3 MR. WALTON: -- on your desktop, Your Honor?

4 THE COURT: Mm-hmm.

5 MR. WALTON: He had to search it in that
6 individually. We were hamstrung by -- by this. Now, Mr. Lieb
7 will also tell you he -- if we put him up here, he --

8 THE COURT: What were you looking for?

9 MR. WALTON: We were looking for any evidence of
10 Nalco -- of connecting Nalco -- connecting USB drives,
11 accessing Nalco files, et cetera. And it just was extremely
12 difficult to search. We were also looking --

13 THE COURT: I mean, what do you search for if it's a
14 -- if it's a Notepad file?

15 MR. WALTON: Mr. Lieb did single word searches,
16 because that's all he could do on a Microsoft Notepad.

17 THE COURT: Yeah.

18 MR. WALTON: And so he would search Nalco, he would
19 search the worth delete, he searched for CCleaner. But there's
20 much more powerful search capabilities if we just had access to
21 the software. Okay?

22 THE COURT: Okay. But you don't have access to the
23 software?

24 MR. WALTON: No, we don't have access to the
25 software. And counsel keeps saying it's only a couple hundred

1 bucks. Mr. Lieb looked into it. It would be several hundred
2 thousand dollars. If it was a couple hundred bucks, we
3 wouldn't be here talking about this. Okay. So he tried to get
4 a trial version, he couldn't get it, and they were going to
5 charge him a couple hundred thousand dollars. So it was -- so
6 all we have is the raw data --

7 THE COURT: Ecolab doesn't use CrowdStrike?

8 MR. WALTON: We have the CrowdStrike raw data logs
9 but not the software to search them.

10 THE COURT: Is it two different pieces of software?
11 What's the --

12 MS. LUND: Yeah. As I understand it, Your Honor, and
13 just to be clear, we gave plaintiffs, to pass on to Mr. Lieb,
14 the exact same file we provided to Mr. Vaughn. He, as far as
15 I know, does not have a CrowdStrike license. We did not
16 provide him with a license. He and his data shop IDS simply
17 did, you know, the processing of the data. And it's my
18 understanding there are in fact simple scripts you can use to
19 run Boolean searches on that data. Apparently Mr. Lieb is not
20 familiar with those. But if you Google it, you can identify
21 those searches.

22 But I guess my broader question is, you know,
23 Mr. Lieb has now had that log for eight months. He has had
24 full opportunity, even searching one term at a time, to go
25 through those terms. And I'm not understanding why --

1 THE COURT: So --

2 MS. LUND: -- why they believe an appropriate --

3 THE COURT: Yeah. So let me --

4 MS. LUND: -- you know, curative sanction would be to
5 access that.

6 THE COURT: -- let me make sure i understand,
7 Mr. Walton. You don't -- there's no dispute that you have all
8 the data that --

9 MR. WALTON: Yes. There is no dispute about that,
10 yes, sir.

11 THE COURT: What's the -- okay. I haven't heard
12 that.

13 MR. WALTON: There is no -- no, no, no, there is no
14 dispute that we have the data.

15 THE COURT: Okay.

16 MR. WALTON: We have the data.

17 THE COURT: Okay.

18 MR. WALTON: We have it in a format --

19 THE COURT: You just need help looking at it.

20 MR. WALTON: Exactly. We just want a -- we asked for
21 spreadsheets. We asked for other formats. I'm just working
22 with my expert Mr. Lieb --

23 THE COURT: Yeah.

24 MR. WALTON: -- and what he's telling me --

25 THE COURT: But you're just looking for words?

1 MR. WALTON: Words and evidence of activity, like,
2 for example --

3 THE COURT: So how do you do that? How do you find
4 that it was plugged into a USB?

5 MR. WALTON: Well, Mr. Lieb's been doing it through
6 the Notepad app. There is a whole --

7 THE COURT: I know, but what I'm saying -- if --

8 MR. WALTON: Yes.

9 THE COURT: -- whatever you're using, how do you find
10 a USB was introduced to this device?

11 MR. WALTON: There is a whole search capability in
12 the dashboard on the CrowdStrike software that you can do that.
13 Mr. Lieb, if you're asking me how he searches for USBs and
14 stuff, I think he searches for the names of the USB. I would
15 have to have you ask him to do that --

16 THE COURT: Yeah.

17 MR. WALTON: -- you know. I don't know how
18 specifically he does that.

19 THE COURT: Okay.

20 MR. WALTON: Okay? But --

21 THE COURT: So you want access to ChemTreat's
22 CrowdStrike license?

23 MR. WALTON: If they can segregate it. I don't want
24 to see all their data. I don't want to have unfettered access
25 to it.

1 THE COURT: I can't imagine that that's contractually
2 okay, right?

3 MS. MIRMIRA: (Moving head up and down.)

4 MR. WALTON: Yeah. Yeah, that's a good point, you
5 know. So, I -- you know, I -- that's a good point. I think
6 that's a fair point, yeah.

7 THE COURT: Okay.

8 MR. WALTON: Yeah.

9 THE COURT: All right. So let's go to the next
10 issue, then.

11 MR. WALTON: All right. so we can maybe discuss that
12 with the Special Master.

13 THE COURT: Yeah.

14 MR. WALTON: But the other thing is, too, is that we
15 understand that there's logs you can run for USB devices on the
16 CrowdStrike. We do not want access or into their -- I do not
17 want to get into their CrowdStrike. I would have the Special
18 Master or some third party do that --

19 THE COURT: Okay. I understand. Is that it for --

20 MR. WALTON: -- on the CrowdStrike.

21 THE COURT: -- the sanctions you're asking for?

22 MR. WALTON: Well, just a couple other things.

23 THE COURT: Okay.

24 MR. WALTON: I was going to ask for this, Your Honor,
25 and I know in light of yesterday's opinion this is going to

1 raise other issues, so I don't want to get too far out on a
2 tangent --

3 THE COURT: Mm-hmm.

4 MR. WALTON: -- but one of the things that we were
5 going to do is ask for a ruling from the Court that they can't
6 make an argument that we didn't use the materials. Now, I know
7 that's going to cause some controversy here, especially in
8 light of the Court's opinion yesterday. But here's our thought
9 process on it, is that they have hamstrung us from showing use.

10 Now, I think under the DTSA, acquisition or use
11 is -- is part of the definition of misappropriation. If the
12 Court is going to make us show use, we would ask for an
13 instruction that they can't argue that we can't show use,
14 because the main receptacles to show the use are gone. And so
15 we're kind of getting whacked on both ends.

16 THE COURT: Well, but not everything in the universe
17 is digital yet, right? So there are other ways to prove that.
18 Witnesses.

19 MR. WALTON: Yeah, but witnesses lie, Your Honor.
20 You know, e-mails -- you know, I mean, that's the good thing
21 about digital evidence is that it's contemporaneous --

22 THE COURT: Right.

23 MR. WALTON: -- and it's objective if you get
24 forensic artifacts.

25 THE COURT: Okay.

1 MR. WALTON: And in this case we feel like we have
2 been led astray multiple times, especially by Mr. Ridley. And
3 so why -- why hasn't he come clean from the beginning, for
4 example, about using his wife's computer to wipe the WD drive?
5 Why hasn't he come clean from the beginning that he wiped the
6 WD drive?

7 THE COURT: Mm-hmm.

8 MR. WALTON: Why didn't he come clean from the
9 beginning that he had multiple backups on his WD drive going up
10 to 2018? We feel like we've just been chasing lie after lie
11 after lie. And so I don't trust witnesses. I'm looking -- I'm
12 looking for objective forensic evidence.

13 THE COURT: Mm-hmm.

14 MR. WALTON: And so that's why we would ask for an
15 instruction from the Court that they're not allowed to argue
16 that we didn't use it.

17 THE COURT: Well, you've got a lot of evidence,
18 right? You've got -- there are things missing, but we have a
19 lot of evidence -- of digital evidence.

20 MR. WALTON: Well, if you look at just the amount, we
21 got some, but, you know, for example, one of the key searches
22 that wasn't done was of the local hard drives. So it's not --
23 so we don't have the evidence from the right sources. And we
24 certainly can't get the evidence from the wiped ChemTreat
25 computer, we certainly can't get the evidence from the wiped WD

1 drive. So, yes, we might have some evidence, but it's from the
2 wrong sources.

3 THE COURT: Mm-hmm. Okay. Anything else?

4 MR. WALTON: Okay. Just on two more quick things.
5 One is, we would like to move the trial date so we can conduct
6 this additional work --

7 THE COURT: Mm-hmm.

8 MR. WALTON: -- with the Special Master. We would
9 like our fees and costs -- I'm sure they'll ask for it, too,
10 but we'd like our fees and costs against both Mr. -- you know,
11 both the sanctions against Mr. Ridley and both the sanctions
12 against ChemTreat.

13 And this pertains a little bit to yesterday, so this
14 -- you might tell me this is not proper to ask for yet,
15 Your Honor --

16 THE COURT: Go ahead.

17 MR. WALTON: -- is that Ms. Trexler, she did not --
18 when she did her expert opinion, she did not know about the WD
19 drive, the data that was on the WD drive, and the wiping of the
20 WD drive. All that we found out after her opinion was
21 submitted. So we would like the opportunity to submit a new
22 expert report which encompasses all the data which is
23 exponentially more than LaCie drive.

24 THE COURT: What does that change?

25 MR. WALTON: I'm sorry, Your Honor?

1 THE COURT: Why does that matter?

2 MR. WALTON: It matters because she did not know
3 about the WD drive, she did not -- we did not know --

4 THE COURT: I know, but so what?

5 MR. WALTON: Well, because it's exponentially more
6 information, Your Honor, that we hope the jury will be allowed
7 to infer that they acquired.

8 THE COURT: But she was -- okay. I hear you. What
9 else?

10 MR. WALTON: Okay. That's it, Your Honor.

11 THE COURT: All right.

12 MR. WALTON: Thank you.

13 THE COURT: Anything on that, defendants?

14 MS. LUND: Your Honor, just briefly.

15 THE COURT: Mm-hmm.

16 (Brief pause.)

17 MS. LUND: So I just wanted to clarify. I heard
18 Mr. Walton say that the main receptacles to show use are gone.
19 And with regard to the sanctions against ChemTreat, the only
20 thing that has been spoliated was ESI and the laptop. And as
21 we've discussed, use requires commercial exploitation.
22 Mr. Ridley was just a boots-on-the-ground salesperson. His job
23 was to go around, knock on doors, walk plants, sell product,
24 right?

25 THE COURT: Mm-hmm.

1 MS. LUND: And that means if he was engaged in any
2 commercial exploitation separate from ChemTreat's system, that
3 we would see it with regard to customers. And as plaintiffs
4 have said, they have no evidence of any customer being lost.
5 In fact, Mr. DeMarco testified they have no evidence of any
6 customer even being solicited using their information.

7 And any other kind of commercial exploitation would
8 require Mr. Ridley to transmit that information to somebody
9 else and for somebody else to use it in a way that could put
10 ChemTreat's stamp on it. And that means it would need to be
11 on something like, you know, their -- an e-mail communication
12 or, again, passing through a OneDrive and a OneDrive file
13 sharing.

14 And so we don't think that -- to the extent that it
15 is appropriate to get the Special Master involved because
16 Your Honor believes there are evidentiary gaps, then we think
17 the thing that makes the most sense is to have plaintiffs
18 identify what are their actual -- what is their actual trade
19 secret information, what is -- what are the phrases or the
20 terms that are unique to Nalco/Ecolab, not something like best
21 practices, or training, but something that they actually, you
22 know, can -- can show is unique to them. And then the Special
23 Master could, again, engage in that incremental, iterative
24 process of starting to see is there anything in that first
25 wave point when you leave with these laptop -- either his

1 e-mail or his OneDrive, that reflects that content. And if
2 there is, then he can continue an iterative search. If
3 there's not, then I think we've reached a null set and we can
4 feel confident that the evidentiary gap has been closed.

5 THE COURT: Okay.

6 All right, Mr. Walton, have we gotten through all
7 your requests, sanction-wise?

8 (Off-the-record discussion between plaintiffs'
9 counsel.)

10 MR. WALTON: No, Your Honor, we are done.

11 THE COURT: You're done?

12 MR. WALTON: Yes, sir.

13 THE COURT: Okay.

14 All right. Who -- who wants to ask me for something
15 over here?

16 (Laughter.)

17 MR. POPE: Your Honor?

18 THE COURT: Yes, sir.

19 MR. POPE: On behalf of Mr. Ridley.

20 (Brief pause.)

21 MR. POPE: Your Honor, before I begin with
22 Mr. Ridley's request, I'd like to address just a few things
23 that Mr. Walton has said.

24 First, he said that he's been led astray multiple
25 times by Mr. Ridley and that they didn't have information that

1 he had wiped the WD drive. That's absolutely not the case,
2 Your Honor. As early as February the 22nd of 2022—and the
3 correspondence is in the court file, attached to
4 pleadings—ChemTreat was aware that Mr. Ridley had a WD drive,
5 a personal laptop --

6 THE COURT: Mm-hmm.

7 MR. POPE: -- that he used to backup his Nalco/Ecolab
8 files --

9 THE COURT: Right.

10 MR. POPE: -- and that he had deleted those files
11 from the drive. Your Honor, that's information that Ecolab did
12 not know until they sent their demand letter and Mr. Ridley
13 told them that, told them that.

14 So to the extent that Mr. Walton says that they've
15 been led astray by Mr. Ridley not telling them that he wiped
16 the WD drive, that's incorrect, that there were multiple
17 backups of the WD drive, that's incorrect, or -- and he also
18 argues that he used his wife's computer for work, Your Honor,
19 there's -- there's not evidence of that. What we're talking
20 about here is a personal external hard drive and his wife's
21 personal computer. The personal external hard drive
22 Mr. Ridley used for work purposes for years. He became
23 employed at Ecolab in 1999 --

24 THE COURT: Right.

25 MR. POPE: -- and he worked there until 2021. Until

1 he signed his employment contract on September the 16th of 2020
2 when he transitioned from Nalco to become a corporate account
3 manager for Ecolab, he had no restriction on the use of that WD
4 drive. He used it in the normal course of work for years and
5 years and years, his personal device.

6 THE COURT: Mm-hmm.

7 MR. POPE: The plaintiffs' allegations, Your Honor,
8 at the beginning of the lawsuit all relate to the LaCie drive
9 and the activity that's on the DLP report, and they allege,
10 ad nauseam, on certain dates he transferred large numbers of
11 files to the LaCie drive and that all of that activity is
12 captured in the DLP report.

13 Your Honor, that DLP report does not capture
14 activity on the WD drive. None of that activity relates to
15 the WD drive, none of it.

16 THE COURT: Mm-hmm.

17 MR. POPE: For the entire look-back period of the DLP
18 report, there is no association with the WD drive. Those are
19 two completely separate devices, WD drive that he used while at
20 Nalco --

21 THE COURT: Mm-hmm.

22 MR. POPE: -- and the LaCie drive that's the subject
23 of the entire complaint.

24 THE COURT: Okay.

25 MR. POPE: And so when Mr. Walton stands up and tells

1 the Court that the focus is now on the WD drive, the focus is
2 now on the WD drive, it's much more about the WD drive, and
3 only the sabotage claim is related to the LaCie drive, that's a
4 complete pivot on behalf of the plaintiffs from what caused
5 them to initiate this lawsuit. And the reason is, Your Honor,
6 because their claims related to the LaCie drive have been shown
7 to have no merit, no merit whatsoever, so they have to pivot
8 away.

9 But still, but still, even in light of that,
10 Your Honor, Mr. Walton wants to be able to make the argument
11 that the LaCie drive relates to the sabotage claim. And the
12 plaintiffs want to be able to do that despite the fact,
13 despite the fact, that they were in possession of the LaCie
14 drive that was returned to them by Mr. Ridley after this
15 lawsuit was initiated. They want to be able to benefit from
16 the fact that that drive was not maintained or preserved in
17 any way whatsoever.

18 THE COURT: Mm-hmm.

19 MR. POPE: And so our request for sanctions against
20 the plaintiffs is that since they did not maintain and preserve
21 the drive, that they not be able to argue that Mr. Ridley --
22 that they not be able to contest that Mr. Ridley returned the
23 drive, that he returned it to the plaintiffs. That's our
24 request for sanctions against Mr. Ecolab -- against Ecolab --

25 THE COURT: Right.

1 MR. POPE: -- and that they not be able to argue that
2 Mr. Ridley transferred any of those files off the LaCie drive,
3 because if we had the LaCie drive and we had Mr. Ridley's
4 computer we'd be able to see that, and they not be able to
5 argue that Mr. Ridley deleted the files and that they no longer
6 have those files that were included in the DLP report as being
7 transferred to the LaCie drive. And the reason is, Your Honor,
8 if -- when Mr. Ridley returned the LaCie drive to the
9 plaintiffs at the end of his employment --

10 THE COURT: Mm-hmm.

11 MR. POPE: -- he's not sabotaging the plaintiffs in
12 any way, he's taking their information, putting it on their
13 device, and returning it to their vendor. That's -- that's the
14 opposite of sabotage, Your Honor.

15 And so our request for sanctions is that the
16 plaintiffs not be able to stand up and tell the jury that the
17 LaCie drive was involved in the sabotage claim, that
18 Mr. Ridley kept it, that Mr. Ridley took it to ChemTreat.
19 None of that has been borne out in the case whatsoever.

20 The ChemTreat CrowdStrike report shows absolutely no
21 connection to the LaCie drive, none whatsoever. That's
22 further evidence that Mr. Ridley did in fact, exactly as he
23 said, return the -- return the drive.

24 THE COURT: Okay. Anything else?

25 MR. POPE: As it relates to a few of the comments

1 Mr. Walton made regarding reopening discovery, I want to say
2 just a few things. The plaintiffs have gotten a lot of
3 traction in this case and made some headway by relying on the
4 volume of the documents that they allege Mr. Ridley
5 misappropriated and not talking about the specifics.

6 THE COURT: Mm-hmm.

7 MR. POPE: So as it relates to the WD drive --

8 MR. UPPAL: Your Honor? Your Honor --

9 MR. POPE: May I --

10 MR. UPPAL: -- I don't mean to interrupt counsel, but
11 could we follow the same protocol where you took it step by
12 step?

13 THE COURT: Are we skipping to something new?

14 MR. UPPAL: It seems like we're going from the LaCie
15 to the WD. So before we do that, I'd like to address counsel's
16 arguments about the LaCie and the sanctions we've requested.

17 THE COURT: Okay. Give me just a second.

18 Go ahead, Mr. --

19 MR. POPE: May I go ahead? May I go ahead,
20 Your Honor?

21 THE COURT: Mm-hmm.

22 MR. POPE: What I was going to say is that as it
23 relates to any searches that's going to take place on the WD
24 drive --

25 THE COURT: Mm-hmm.

1 MR. POPE: -- we really should focus on the documents
2 that any search of his wife's laptop shows that Mr. Ridley
3 accessed, if there are any there, and then see, see, if any of
4 that material that Mr. Ridley accessed from his wife's computer
5 on his personal WD drive were used in any way to hurt the
6 plaintiffs. Mr. Walton indicates that Mr. Ridley and ChemTreat
7 has their playbook, has their playbook.

8 THE COURT: Mm-hmm.

9 MR. POPE: Well, let's actually -- let's actually
10 look at the search, have the Special Master look at that, see
11 if Mr. Ridley ever accessed a playbook and if that playbook was
12 ever transferred to ChemTreat in any way whatsoever. If not,
13 Your Honor, it doesn't affect anything in the case and it's
14 just a pivot of the plaintiffs away from the LaCie drive and
15 trying to make the entire case about spoliation when the other
16 claims regarding taking customers or damages or irreparable
17 harm just have no legs whatsoever.

18 THE COURT: Okay. Thank you, sir.

19 Yes, sir, come on up.

20 MR. UPPAL: Good morning, Your Honor.

21 I'm going to start with -- first of all, my name is
22 Pavneet Uppal.

23 THE COURT: Mm-hmm.

24 MR. UPPAL: I'm going to start with addressing the
25 sanctions that opposing counsel has just requested with respect

1 to the LaCie drive. He began by telling the Court that we
2 should have known all along that the documents were deleted
3 from the WD drive and we have suddenly engaged in this giant
4 pivot from the focus from the LaCie to the WD. But as
5 Your Honor has noted in your order at Doc. 353 --

6 THE COURT: Mm-hmm.

7 MR. UPPAL: -- Mr. Ridley has told a series of just
8 preverifications -- prevarications, misleading statements, and
9 mendacious lies, and has not corrected his interrogatory
10 responses. That is a statement that Your Honor has made in his
11 own order.

12 So let's go back for a second and -- and start with
13 what opposing counsel said. He said, "Hey, you've known about
14 the WD drive from the beginning of the case and the fact
15 that -- you know, you should have known about this wiping."

16 But let's go look at that. In your order at
17 Doc. 353, at Page 2, you make the following observations about
18 Mr. Ridley's sworn interrogatory responses. You note that
19 Mr. Ridley, in his interrogatory responses, says that he
20 backed up files from his work laptop while he was employed by
21 Nalco to an external drive before the company had a
22 cloud-based storage system. Well, that's a lie, because he
23 continued to back up files to this WD drive well after a cloud
24 storage system was implemented.

25 The cloud storage system, namely, a OneDrive

1 account, was implemented by Ecolab in 2018. Your Court has
2 already made -- Your Honor has already made the finding that
3 Mr. Ridley did not limit himself to backing up to his external
4 drives before the company had a cloud storage-based system.
5 He continued through two -- 2020, in terms of backing up to
6 the WD drive. And then he continued until 2021 backing up to
7 the LaCie drive. So there's one lie.

8 Secondly --

9 THE COURT: Well, let me try to focus this, because I
10 -- I'm not arguing with anything you're saying. Okay? But
11 what I'd like to focus on is the three things Mr. Pope asked me
12 to sanction Ecolab -- the three ways he asked me to sanction
13 Ecolab: One is, you don't get to argue that Mr. Ridley didn't
14 return the LaCie drive; two is, you don't get to argue that
15 Ridley transferred these other files that are at issue from the
16 LaCie drive to any other device; three, that -- that he would
17 ask me to order that you not get to take the position that
18 Ridley deleted or moved any of the files identified -- is it
19 the DLP report? Is that what you referred to?

20 MR. POPE: That's right.

21 THE COURT: Yeah. -- from the Ecolab/Nalco system.

22 So let's focus on -- the first two talk about the
23 LaCie drive. So we know how --

24 MR. UPPAL: Okay.

25 THE COURT: -- the LaCie drive was lost. So now what

1 do we do about it?

2 MR. UPPAL: Okay. I'll come back to -- I'll do
3 exactly what you're saying. I'll come back to the fact that
4 Mr. Ridley lied in his interrogatories saying that he last used
5 the WD in 2015 and '16 --

6 THE COURT: But that didn't -- but that didn't cause
7 you to lose the LaCie drive.

8 MR. UPPAL: Right. Okay. So let's --

9 THE COURT: So let's talk about the LaCie drive.

10 MR. UPPAL: Okay. So as to the LaCie drive, the
11 story that defendants want to tell is that, first of all, the
12 loss of the data on the LaCie drive is somehow proximately
13 caused by my client's failure to timely preserve the LaCie
14 drive.

15 But the proximate cause of the data actually being
16 lost from the vast amount of material that was downloaded to
17 the LaCie drive is actually Mr. Ridley. What happened here is
18 that Mr. Ridley unleashed a torrent of deceptive misconduct
19 and laid a series of traps for my client and now wants to turn
20 around and argue that his intentional misconduct should be
21 overlooked and my client should be held liable for what
22 Your Honor has characterized as negligence, because remember
23 what happens here, okay?

24 THE COURT: I don't -- I don't think you're answering
25 my question, Mr. Uppal --

1 MR. UPPAL: I'm saying that the --

2 THE COURT: -- I don't, I really don't.

3 MR. UPPAL: Okay.

4 THE COURT: And I don't want to waste time, because
5 I've got other things I've got to get to and we're already an
6 hour and a half in. I need you to tell me your position on
7 what I should do about what Mr. Pope has asked. Let's just
8 talk about the first two issues regarding the LaCie drive.

9 MR. UPPAL: None of those sanctions should be
10 awarded.

11 THE COURT: Okay. Why not? Just because he's --
12 he's worse?

13 MR. UPPAL: No.

14 THE COURT: Okay.

15 MR. UPPAL: Because --

16 THE COURT: That's what you've argued so far. So
17 let's talk about 37(e)(1). Okay?

18 MR. UPPAL: Because Mr. Ridley is the cause of the
19 loss of the data on the LaCie drive, because what he did was,
20 he downloaded -- and Mr. Ridley --

21 THE COURT: I haven't -- but I haven't sanctioned
22 Mr. Ridley for doing that.

23 MR. UPPAL: No, but --

24 THE COURT: You didn't ask me to sanction Mr. Ridley
25 for doing that or to find that -- that he didn't preserve it.

1 I have found that you didn't preserve it. We're past what
2 you're trying to argue. You lost data. What do I do about it?

3 MR. UPPAL: Your Honor, none of those sanctions that
4 Mr. Pope has argued for should be awarded because we contest
5 that Mr. Ridley returned the LaCie drive. The only evidence --

6 THE COURT: I know. And that's one of the sanctions
7 that he's asking for --

8 MR. UPPAL: Yes.

9 THE COURT: -- is for you to not be able to take that
10 position, because if we had the LaCie drive or what he said was
11 the LaCie drive, we would -- we would know.

12 MR. UPPAL: But, Your Honor, that assumes that he
13 returned the LaCie drive.

14 THE COURT: No.

15 MR. UPPAL: It does. I -- I respectfully disagree.
16 Because if he did not return the LaCie drive, then we would
17 have nothing to preserve. Your Honor has already made the
18 observation --

19 THE COURT: Wouldn't we know whether he returned it
20 if you had preserved it, whatever he returned?

21 MR. UPPAL: I'm sorry, Your Honor, could you repeat
22 that?

23 THE COURT: I mean, am I missing this?

24 MR. POPE: No, you're not.

25 THE COURT: Okay.

1 MR. POPE: No, Your Honor, you're not.

2 THE COURT: If you -- if Ecolab hadn't lost whatever
3 he returned, wouldn't we know whether it was the drive you
4 expected to be returned? I mean, I think that's a tautology,
5 honestly, but what -- you're losing me.

6 MR. UPPAL: Sure, Your Honor, but the jury should be
7 allowed to hear that in light of all the lies that Mr. Ridley
8 has told, in light of the finding that Your Honor has already
9 made in your order that Mr. Ridley lacks credibility, a finding
10 similar to Judge Lee's comments about Mr. Ridley's lack of
11 credibility, the jury has ample basis to conclude that although
12 Mr. Ridley, conveniently for him, claims that he returned the
13 LaCie drive, he never in fact did so. So if, for example --

14 THE COURT: But -- okay. I hear you. If -- but
15 you're telling me that the device that was -- what happened to
16 the LaCie drive? Was it wiped, or was it destroyed?

17 MR. POPE: It was destroyed.

18 THE COURT: Okay. If we had that in hand, wouldn't
19 we be able to answer that question that you just asked, whether
20 he returned the LaCie drive?

21 MR. UPPAL: Your Honor, if my client had it --

22 THE COURT: Answer my question. If we had that in
23 hand, wouldn't we know the answer to this question you're
24 posing toward Mr. --

25 MR. UPPAL: But the reason we -- the reason why --

1 THE COURT: Answer my question. Would we know?

2 MR. UPPAL: But, Your Honor, that assumes --

3 THE COURT: Would we know? I'm going to --

4 MR. UPPAL: If he had --

5 THE COURT: Last time -- last attempt, and then I'm
6 going to ask you to sit down. Would we know? If we had this
7 in hand, would we know what you're alleging about Mr. Ridley is
8 true or false?

9 MR. UPPAL: When you say if we had it --

10 THE COURT: All right. Sit down. Sit down. All
11 right. Let me hear from-- Sit down.

12 Ms. Lund, do you want to respond?

13 MS. LUND: Yes, Your Honor. And given that the
14 sanctions that ChemTreat is requesting with regard to
15 plaintiffs' spoliation overlap to some extent with the
16 sanctions that Mr. Ridley is requesting --

17 THE COURT: Mm-hmm.

18 MS. LUND: -- I thought it would make sense to go
19 ahead and provide two additional demonstratives that we
20 prepared to help explain, as the judge -- as Your Honor
21 indicated, the sanction that we are requesting, what spoliation
22 it's tied to, what prejudice we have suffered --

23 THE COURT: Mm-hmm.

24 MS. LUND: -- and how we're going to cure it. So if
25 Ms. Mirmira can approach --

1 MS. MIRMIRA: May I approach, Your Honor?

2 THE COURT: Sure.

3 MS. LUND: -- the bench, she has hard copies to
4 distribute.

5 (Brief pause.)

6 THE COURT: This looks more complicated, Ms. Lund.

7 MS. LUND: So just to orient you to what you have
8 here, there is one demonstrative that lays out the sanctions
9 that we proposed in our motion.

10 THE COURT: Which one are you looking at?

11 MS. LUND: Remedial Sanctions for Plaintiffs'
12 Spoliation.

13 THE COURT: All right. All right.

14 MS. LUND: And essentially what we have done is taken
15 the four sanctions that we identified in our motion and we have
16 allocated them based on the potential for the -- an inquiry by
17 the Special Master. And so I'll walk through those.

18 But just in case it comes up, because I know there
19 were a lot of things happening sort of at the same time, we've
20 also prepared a timeline that shows, for example, when
21 plaintiffs have alleged that there were downloads or uploads,
22 when they had access to the documents, when they failed to
23 preserve, just to the extent that it's helpful. You know,
24 this doesn't necessarily need to be referred to, but, as
25 I said, I know that the briefing has been extensive, there

1 have been a lot of dates flying around. And so you'll see
2 that each discussion has a citation to the docket entry that
3 specifies that evidence so that you can refer back to it.

4 So if everybody has received their copies, the first
5 sanction that we wanted to talk about and which Mr. Pope also
6 referred to, that we believe can be entered now, is that
7 plaintiffs should not be allowed to make any claim that
8 Mr. Ridley deleted the allegedly misappropriated documents
9 before resigning.

10 Now, the reason that we think that this is a very
11 clearly appropriate sanction is because --

12 THE COURT: This is the LaCie drive, right?

13 MS. LUND: This -- well, this is the LaCie drive and
14 the laptop --

15 THE COURT: Okay.

16 MS. LUND: -- because essentially what happens here
17 is --

18 THE COURT: Okay. The second laptop that he only had
19 for a few days?

20 MS. LUND: Yes. Well, it was actually -- it was
21 several weeks, Your Honor. But essentially the way that
22 Mr. Garza, who is their corporate representative and is the
23 individual who was actually involved in recovering documents
24 from Mr. Ridley's OneDrive, to the extent any were deleted,
25 explained it, he said that the way the Ecolab system is set up

1 is that there is a folder on the individual's hard drive that
2 syncs -- it's a two-way sync to the OneDrive that's in the
3 cloud. So essentially there's an icon that's on the laptop,
4 that is on the C drive, the hard drive, that stores OneDrive
5 documents, and that has a two-way sync to the cloud OneDrive,
6 so that if you put something on the cloud it shows up on your
7 laptop, if you put something on your laptop it shows up on the
8 cloud.

9 And this is critical, because what plaintiffs claim
10 the DLP report shows is that Mr. Ridley copied materials that
11 were on his C drive. They've referred to it as his OneDrive,
12 which is technically accurate, but it was not the cloud
13 OneDrive. The DLP report is clear that it was the C drive
14 version, that he copied that to the LaCie drive. That was
15 principally with the first laptop. And then what happened
16 was, when he returned his first laptop and received his second
17 laptop, he synced it to the cloud, so that we know immediately
18 whatever was in the cloud OneDrive moved onto his second
19 laptop.

20 And given that the DLP report, as Mr. Garza
21 confirmed, shows absolutely no deletion, and that that is a
22 function that is searched for in every DLP report, as
23 Ms. Semmler, who ran the report, confirmed, we know that if
24 Mr. Ridley had deleted anything, whether from his laptop or
25 from the cloud, it would appear on the DLP report. It does

1 not appear there. And that means that every one of these
2 allegedly misappropriated documents remained in the cloud
3 OneDrive when he got his second laptop and every one of those
4 documents was synced to his second laptop. They spoliated
5 that second laptop. It was copied to the LaCie drive. They
6 spoliated the LaCie drive.

7 And the other key point, Your Honor, I think, is
8 that with regard to the second laptop, if plaintiffs' theory
9 is right, if somehow their DLP report is not, as they have
10 asserted, as their expert has testified, a complete reflection
11 of every human interaction that Mr. Ridley had with those
12 files, and if in fact there was some mass deletion that the
13 DLP report failed to capture, and that no automated e-mail
14 went out, even though we have seen that such automated e-mails
15 do go out, but if, setting aside all the actual
16 incontrovertible evidence, you were to believe there was some
17 deletion, we would see that on the second laptop, because it
18 was disconnected from the system entirely when plaintiffs cut
19 off Mr. Ridley's access on July 1st, 2021, it would be a
20 snapshot of what he had on his hard drive and therefore on the
21 cloud OneDrive on that day.

22 But because plaintiffs spoliated that laptop, we
23 have no way of knowing -- we have this evidentiary gap that
24 leaves us with only the evidence on the DLP report. And the
25 evidence on the DLP report says no deletion. And so we think

1 it's very clear that plaintiffs should not on the one hand be
2 able to rely on the DLP report as this complete recounting of
3 everything that Mr. Ridley did and on the other hand say, "Oh,
4 but as to this one thing, it's inaccurate."

5 We think that given their spoliation of the second
6 laptop and of the LaCie drive, the mobile drive that would
7 allow us to see what, if anything, had been preserved on those
8 two --

9 THE COURT: Mm-hmm.

10 MS. LUND: -- physical devices and their ESI, that
11 this is a sanction that can be entered now without any further
12 inquiry.

13 THE COURT: Has this been -- have you briefed this
14 issue?

15 MS. LUND: Yes, Your Honor. You -- it -- you will
16 see that we laid out these sanctions in our opening motion.

17 THE COURT: But the issue about --

18 MS. LUND: The second laptop.

19 THE COURT: -- the second laptop being reflective of
20 what the first laptop would have shown?

21 MS. LUND: Yes. That is in our reply brief. And we
22 specifically cite --

23 THE COURT: Okay.

24 MS. LUND: -- I believe, to the testimony of
25 Mr. Garza that talks about the two-way sync. But to the extent

1 that that is not attached, Your Honor, we can submit that to
2 the Court.

3 THE COURT: Okay. I'm sure it's there.

4 MS. LUND: Yeah.

5 THE COURT: I'll just have to review it.

6 MS. LUND: Okay. So then moving to the next
7 sanction, which --

8 THE COURT: So let me hear from Mr. Uppal about the
9 first --

10 MS. LUND: Yes.

11 THE COURT: -- the first sanction.

12 All right. So, Mr. Uppal, I'm going to start this
13 again. If we had the device that was returned, we would know
14 what device that was, right?

15 MR. UPPAL: Yes, Your Honor, if in fact it was
16 returned.

17 THE COURT: Okay. All right. So let's move forward.

18 MR. UPPAL: Your Honor, if I may, I want to go back
19 to the LaCie drive. So I believe I've conceded the point that
20 you're looking for. But there's two issues with respect to
21 spoliation. So there's no sanction, typically, for spoliation
22 if the same material exists in another repository or another
23 form. And the reason -- what I was trying to say previously,
24 obviously inartfully, is that the reason that the material on
25 the LaCie drive, which is gone --

1 THE COURT: Right.

2 MR. UPPAL: -- does not exist is, at its core,
3 because of Mr. Ridley, because what Mr. Ridley was doing was,
4 he was downloading information from Ecolab's OneDrive account
5 to the LaCie drive. Let's start with he had no reason to do
6 that. You have a cloud drive system. If you want to move
7 files, if you want to organize them, you organize them on the
8 cloud drive. There's absolutely no legitimate or innocent
9 reason for him to be downloading information from the OneDrive
10 to the LaCie drive.

11 Moreover—and this is the key issue here, in my
12 view, in terms of whatever sanctions Your Honor might be
13 considering—as he downloads material from Ecolab's OneDrive
14 account to the LaCie drive, which he has no innocent reason to
15 do, he contemporaneously deletes the information from the
16 OneDrive account. Okay? So because of what he was doing, in
17 a completely mendacious manner—you know, he's got no reason,
18 absolutely none, to be downloading to the LaCie drive—he
19 deletes it from the OneDrive.

20 So, Your Honor, if Your Honor is inclined to
21 conclude that he returned the LaCie drive to Insight, which is
22 a highly contested issue, that same information would have
23 existed on the OneDrive but for the fact that he chose to
24 deprive my client of that information by downloading it and
25 then deleting it from the OneDrive.

1 So what I was trying to present to Your Honor last
2 time is that in terms of a sanction that you're indicating,
3 you're right that the LaCie drive is gone, but the information
4 on it would have still been present on the OneDrive had he not
5 deleted it on his way out the door. And under that
6 circumstance I would say to Your Honor that Mr. Ridley has
7 completely unclean hands and no sanction is warranted.

8 The second thing that I want to address is, it would
9 be an anomalous and, I submit to you, an improper situation
10 for Your Honor to have handed down sanctions for alleged
11 spoliation of the LaCie drive if the jury were to conclude
12 that he never returned the LaCie drive. And that's certainly
13 an open issue. I haven't seen anything in Your Honor's order
14 to indicate that we are barred from presenting that to the
15 jury. And there is a load of evidence that Mr. --

16 THE COURT: Well, I -- look, there's a lot of what
17 I've heard in this case that's not going to be presented to the
18 jury, a lot --

19 MR. UPPAL: Okay.

20 THE COURT: -- a lot. We're not going to -- this
21 case is not going to be two weeks of spoliation. We're not
22 doing that. That's a complete waste of time.

23 MR. UPPAL: Fair enough. But Your Honor and
24 Magistrate Lee have already indicated that Mr. Ridley lacks
25 credibility. And so that lack of credibility certainly --

1 THE COURT: Well, for our -- look, maybe -- we -- I
2 can't remember what Judge Lee -- but I have made observations
3 for the purposes I have. I haven't branded him un- -- in- --
4 noncredible for the jury's -- I mean --

5 MR. UPPAL: I understand.

6 THE COURT: -- and they're not going to see my
7 orders, so...

8 MR. UPPAL: Absolutely. And I certainly understand.
9 And I know that we will follow whatever restrictions Your Honor
10 hands down. But the point that I'm trying to make is, as
11 things currently stand --

12 THE COURT: Mm-hmm.

13 MR. UPPAL: -- we fully intend to argue to the
14 Court -- to the Court and to the jury that Mr. Ridley has a
15 problem with the truth, that he's repeatedly misled us and he's
16 repeatedly lied to us, and one of the many things that he is
17 lying about is returning the LaCie drive.

18 The point to that is, is that if the jury accepts
19 our argument on this issue --

20 THE COURT: What evidence is there that he didn't
21 return it?

22 MR. UPPAL: He lies about --

23 THE COURT: I mean, but -- I understand that. What
24 evidence is there that he didn't return it?

25 MR. UPPAL: The evidence -- well, what would be his

1 motive to have returned it? The documents that he downloads to
2 the LaCie drive are Nalco documents, right? Your Honor has
3 noted this in your order --

4 THE COURT: Right.

5 MR. UPPAL: -- that he's downloading while he's at
6 Nalco. And he goes over to Ecolab. His replacement at Nalco
7 was an individual named Ben Irwin. And Ben Irwin asked him,
8 "Hey, I need your Nalco customer files.

9 THE COURT: Mm-hmm.

10 MR. UPPAL: "I need all of this data because I am
11 your replacement to service the same accounts."

12 And he says, "I don't have it. I don't have it.
13 There's -- I have nothing to give to you."

14 So having made this false statement to Mr. Irwin --
15 and we know it's false because he has it in two forms. At
16 that stage he has it on his LaCie drive and he also has it on
17 his WD drive.

18 So he outright lies to Mr. Irwin, claiming, "I don't
19 have any of this." Clearly that's sabotage. So if he's
20 willing to sabotage and lie to Mr. Irwin, why would he return
21 that LaCie drive at all?

22 (Off-the-record discussion between plaintiffs'
23 counsel.)

24 MR. UPPAL: Also, Your Honor, some of my client --
25 excuse me, my colleague is reminding me that some of the files

1 that Mr. Ridley accessed on his ChemTreat computer were on the
2 LaCie. And I suppose he could have had it from another source,
3 but that's certainly an indication that he didn't return the
4 LaCie.

5 So I understand your point. As I understand it,
6 Your Honor takes --

7 THE COURT: What -- you're not -- you're not telling
8 me there's an indication that -- say -- say that again. What
9 did you just say? Let me understand what you were trying to --

10 MR. UPPAL: Some of the files that Mr. Ridley
11 accessed by using his ChemTreat computer were files that were
12 located on the LaCie.

13 THE COURT: The same files?

14 MR. UPPAL: The same file names.

15 THE COURT: But not -- you're not telling me he at a
16 relevant time accessed the LaCie.

17 MR. UPPAL: I don't know.

18 THE COURT: Okay.

19 MR. UPPAL: I don't know. But he --

20 THE COURT: All right.

21 MR. UPPAL: -- he could have. But my --

22 THE COURT: He could have, like you -- yeah.

23 MR. UPPAL: The overall point that I'm trying to make
24 is that it would be a strange and, I submit to you, improper
25 situation for your -- for the Court to sanction us for having

1 failed, as Your Honor lays out in your order, to preserve the
2 LaCie for the reasons Your Honor lays out, if the jury
3 concludes, which it can, because they're the fact-finder, that
4 Mr. Ridley never in fact returned the LaCie. That's one issue,
5 that sanctions should not be handed down in this situation
6 where the jury can conclude as the fact-finder --

7 THE COURT: And what's wrong with that?

8 MR. UPPAL: Well, Your Honor, then you would be --
9 you would --

10 THE COURT: I mean, we'd -- yeah, it's a sanction.
11 What's wrong with that?

12 MR. UPPAL: But, Your Honor, I would -- so what's
13 wrong with that, in my view, is that the sanctions, under that
14 circumstance, would be improper, because if he never returned
15 the LaCie, how could we preserve it?

16 THE COURT: But, again, we would know if you had it,
17 right?

18 MR. UPPAL: We would know what he returned, sure. If
19 we had -- if -- it's described as a -- the return is described
20 as a mobile drive --

21 THE COURT: Right.

22 MR. UPPAL: -- and if we had returned the mobile
23 drive, we would know is it a mobile drive or is it the LaCie,
24 yes.

25 THE COURT: Okay.

1 MR. UPPAL: But, Your Honor, the second point is also
2 true, had he not deleted the information from the OneDrive,
3 we'd have the same information that's on the LaCie.

4 THE COURT: Well, you'd have -- you're saying you'd
5 have copies.

6 MR. UPPAL: I'm sorry?

7 THE COURT: You would -- it's not the same. It's a
8 different bucket of evidence.

9 MR. UPPAL: No. No, Your Honor, it's the same,
10 because the information that he downloaded to the LaCie was
11 taken from Ecolab's corporate cloud drive, its OneDrive
12 account. So if you don't -- like what Mr. Ridley did, as he's
13 downloading to the LaCie, he's making sure to delete it from
14 the OneDrive account because he knows he's leaving.

15 THE COURT: Right. But those are two different
16 locations.

17 MR. UPPAL: Those are two different locations, but
18 typically sanctions are not awarded if the same information
19 that is allegedly gone --

20 THE COURT: Okay.

21 MR. UPPAL: -- is available in another source. And
22 the only reason it's not available in another source is because
23 of Mr. Ridley.

24 THE COURT: Okay. Let me -- I'm going to give you
25 more time. I'm afraid we're going to have to take a break.

1 Unless you tell me that there's a reason not to, I'm going to
2 resume at 2:00. But does anybody want to address that issue
3 about -- the issue about whether the files on the LaCie drive
4 would have been available somewhere else?

5 MS. LUND: Yes, Your Honor, if I could briefly be
6 heard.

7 THE COURT: Okay.

8 MS. LUND: So, Your Honor, just to clarify, I think
9 it's important to take a step back and understand what was on
10 the LaCie drive based on the DLP report. The DLP report
11 reflects that Mr. Ridley copied from his hard drive version of
12 his OneDrive to the LaCie drive a group of folders that were
13 Nalco Water folders. Those were also, per Mr. Ridley's
14 testimony, the same folders that he backed up onto his WD
15 drive.

16 Essentially, as we understand his testimony, he had
17 a habit of creating backups, because of a, you know, mistrust
18 of the cloud-based system where iteratively, say, 2015, 2016,
19 maybe in 2020, he would put copies of these Nalco Water files
20 onto his WD drive. And then in 2021, as Mr. Uppal has alluded
21 to, he, according to the DLP report, put those same files onto
22 the LaCie drive.

23 So when Mr. Uppal tells you that the same file names
24 appeared on the CrowdStrike log, it doesn't prove it came from
25 the LaCie, because the LaCie is simply the -- the latest

1 iteration of the files that were on the WD drive. What we do
2 know and as Your Honor is familiar with this because of the
3 order you issued yesterday, the CrowdStrike log actually
4 associates those files with Hard Disk Volume 5 and 6, which
5 are actually, as we have established -- or Mr. Vaughn has
6 established, associated with the serial number that is the WD
7 drive.

8 So, you know, unfortunately we don't have copies
9 from the WD drive, from the ChemTreat laptop, or from any of
10 the various devices or OneDrive that plaintiffs had of these
11 actual documents so that we can say, "Here is the chain of
12 custody."

13 THE COURT: Mm-hmm.

14 MS. LUND: The other issue I wanted to address is
15 that Mr. Uppal said repeatedly that Mr. Ridley downloaded these
16 documents and then contemporaneously deleted them. But I
17 didn't hear him cite to any evidence of that, and the reason is
18 that there is no evidence. That is in fact contrary to the DLP
19 report which says that no deletion happened, contrary to the
20 testimony of their corporate representative Mr. Garza who said
21 that if any deletion had occurred it would be reflected on the
22 DLP report, and contrary also to the testimony of Mr. Garza
23 where he said that in July of 2021, sometime between when the
24 DLP report was requested, which was July 18th, and the end of
25 the month, which is on the timeline, he participated in a

1 working group where everything that had been deleted from that
2 cloud-based OneDrive of Mr. Ridley's was recovered.

3 THE COURT: Mm-hmm.

4 MS. LUND: And he said that reached back 93 days.
5 And you can see that that period, depending on whether it was
6 the end of July or mid July, reaches back to sometime in April,
7 long before any of the alleged misappropriation activity
8 occurred.

9 So even if all of those documents had been deleted,
10 although, again, plaintiffs' own documents reflect they
11 weren't, the undisputed testimony is that any deleted
12 documents were recovered. What we know is that by the time
13 that plaintiffs finally forensically imaged a copy of that
14 cloud-based OneDrive that had been placed at some point in
15 time on the laptop of a paralegal who worked in Ecolab's
16 in-house legal department -- that was January 25th, 2022, that
17 Mr. Lieb forensically imaged that copy. And what we know is
18 that by the time that was imaged, the copy produced to us did
19 not contain any of those Nalco Water files.

20 So at some point between when Mr. Garza recovered
21 them in July of 2021 and when plaintiffs forensically imaged
22 that OneDrive in January 2022, those files disappeared. But
23 that was entirely within plaintiffs' control, and so they
24 cannot be heard now to complain that they don't have those
25 files. That is attributable to their --

1 THE COURT: All right. We'll stop there, and I'll
2 hear from Mr. Uppal when we get back.

3 Also, talk about two things during the break. One
4 is trial dates in January. I think I can arrange to do this
5 any week. And two is, talk about who you want to mediate your
6 case on September 11th, September 11th.

7 MR. WALTON: Did you say mediate on September 11th?
8 My --

9 THE COURT: I did.

10 MR. WALTON: -- hearing is a little off in here.

11 THE COURT: That's all right. No, this room is --
12 the acoustics in here are not --

13 MR. WALTON: But a beautiful room, Your Honor. It's
14 not --

15 THE COURT: It's beautiful, but it's not -- the
16 acoustics are not good. So --

17 MR. WALTON: Okay.

18 THE COURT: -- talk about those two things. I know
19 we'll have scheduling issues. But I'll see you at 2:00.

20 (Luncheon recess.)

21 THE COURT: All right. Let's pick up where we left
22 off. What about a trial date? Where are we on that?

23 MS. MIRMIRA: Your Honor, you asked about the trial
24 date?

25 THE COURT: Yes.

1 MS. MIRMIRA: Yes. So we've discussed it. I think
2 January 29th works for all parties to start trial.

3 THE COURT: Okay. All right. And then mediation?
4 What are people saying about that?

5 MR. WALTON: Plaintiff says yes.

6 THE COURT: Yep. Do you have any ideas about who
7 or --

8 MS. MIRMIRA: I think we can work it out amongst the
9 parties.

10 THE COURT: Okay. All right. The reason -- and
11 obviously, you know, if we -- if you can get it set for a
12 different date, that's fine, but I will -- but I know you're
13 available on the 11th, right?

14 MS. MIRMIRA: (Moving head up and down.)

15 MR. WALTON: Yes.

16 (Laughter.)

17 MR. WALTON: Yes. But there's a lot of good
18 mediators, Your Honor. We started checking schedules, and
19 their --

20 THE COURT: Yeah.

21 MR. WALTON: -- their schedules are pretty crammed.

22 THE COURT: I know. And that's -- that'll be an
23 issue. Do you have anybody in mind? Have you talked about
24 names?

25 MS. MIRMIRA: No, we didn't quite -- well, they have

1 one suggestion, but we haven't --

2 THE COURT: Yeah.

3 MS. MIRMIRA: -- gotten very far just in a few
4 minutes.

5 THE COURT: Okay.

6 MR. BOEHM: Your Honor, I suggested Michael Russell,
7 but I just checked his calendar and he's booked every day in
8 September. So...

9 THE COURT: Okay.

10 MS. MIRMIRA: And we may have some suggestions as
11 well. But I think we can work it out amongst the parties to
12 find somebody agreeable to everyone.

13 THE COURT: Okay. Where are the corporate offices?
14 I don't remember.

15 MR. WALTON: Ecolab's are up in Minneapolis.

16 THE COURT: Okay.

17 MS. MIRMIRA: And the ChemTreat's headquarters is
18 near Richmond, Virginia, Glen Allen.

19 THE COURT: All right. We'll work on that a little
20 bit more next week.

21 MR. WALTON: Thank you, Your Honor.

22 THE COURT: All right.

23 Okay. Yes, sir, Mr. Uppal. Take it away.

24 (Brief pause.)

25 MR. UPPAL: Thank you, Your Honor. I want to address

1 the issues that were raised by opposing counsel right before
2 the break.

3 So, Your Honor, our expert is here. I realize we're
4 pressed for time, but if Mr. Lieb had an opportunity to be put
5 on the stand, he would testify that he recovered, "he" being
6 our expert witness Mr. Lieb, recovered the contents of
7 Mr. Ridley's Ecolab OneDrive account as that account and its
8 contents existed as of the date of Ridley's departure from
9 Ecolab on July 1, 2021.

10 So, again, our expert, his position and he's willing
11 to testify under oath that it is whatever Mr. Ridley had on
12 his OneDrive account as of July 1, 2021, we have. And, in
13 fact, we've produced that to the other side.

14 And here's the next point. Mr. Lieb our expert's
15 report already makes clear and states that Mr. Ridley had a
16 top-level folder called Ridley's Nalco Folder, because,
17 remember, as of 2021 Mr. Ridley had left or transferred from
18 Nalco to Ecolab, right? So on his OneDrive account Mr. Ridley
19 has Ecolab files and he has Nalco files. The Nalco files
20 which are relevant to this case are all in a top-level folder
21 called Ridley's Nalco Folder. This is already in the
22 disclosed report. The Digital Guardian or DLP report shows
23 that everything that Mr. Ridley downloaded from his OneDrive
24 to his LaCie came from this Ridley's Nalco Folder.

25 Mr. Lieb's report further states that the Nalco --

1 the Ridley's Nalco Folder, although it existed, it was
2 deleted. Let me say that again. Ridley deleted the entire --
3 not just the contents, the entire folder that he named
4 Ridley's Nalco Folder.

5 THE COURT: Mm-hmm.

6 MR. UPPAL: Okay. Now, because we know, because
7 Mr. Lieb will testify that he recovered the OneDrive as it
8 existed on July 1, 2021, which is Mr. Ridley's departure date,
9 and that recovered OneDrive account does not contain the folder
10 called Ridley's Nalco Folder, this means that Ridley deleted
11 the Ridley's Nalco Folder before he left Ecolab on July 1,
12 2021, and joined ChemTreat.

13 This in turn also shows that Ridley's Nalco Folder
14 on the OneDrive never made it to the replacement computer.
15 You heard Mr. Lund -- Ms. Lund, excuse me, make the argument
16 to you that, "Hey, there's this replacement computer," and in
17 the briefing, you know, it's stated that that replacement
18 computer was issued to Mr. Ridley on or about July 9 --

19 THE COURT: Mm-hmm.

20 MR. UPPAL: -- so -- excuse me, June 9. And Ms. Lund
21 essentially, if I understood her argument, is arguing that,
22 "Hey, the second replacement computer was not preserved, and if
23 you had preserved it, it would have synced up with the OneDrive
24 and therefore you would know what's on that OneDrive, and
25 therefore there's spoliation."

1 But that's not correct, because the sync between the
2 replacement computer and the OneDrive is only going to sync up
3 to what exists on the OneDrive account, and that's all been
4 deleted. Mr. Ridley deleted the entire Ridley's Nalco One
5 Folder from which he deleted onto the LaCie.

6 So even if you indulge this argument that the
7 replacement computer would have synced up to the OneDrive, it
8 doesn't get you anywhere, because you can't sync up to
9 something that doesn't exist on the OneDrive. And it doesn't
10 exist on the OneDrive because Mr. Ridley deleted it. And he
11 deleted it on or before his departure date of July 1, 2021.

12 All this is important because we take to heart
13 Your Honor's admonition and Your Honor's views on the fact
14 that the mobile drive should have been preserved. But we hope
15 that Your Honor, in assessing whether sanctions are
16 appropriate in the first place --

17 THE COURT: Mm-hmm.

18 MR. UPPAL: -- or what level of sanctions should be
19 addressed, will consider that sanctions are not usually awarded
20 if the evidence that wasn't preserved is available on another
21 source. And here it was available on another source except for
22 Mr. Ridley's misconduct in deleting it from that second source,
23 the OneDrive account. And, again, bear in mind --

24 THE COURT: Couldn't he say the same about you?
25 "Yeah, I know I deleted it, but it would be available if they

1 hadn't deleted it," right?

2 MR. UPPAL: Yeah, but, sure, but, sure, that's
3 circular, and it's his burden of proof --

4 THE COURT: Yeah.

5 MR. UPPAL: -- on sanctions, right? Essentially, you
6 know, that, to me, if you were to say the same thing, that, to
7 me, is somewhat analogous of someone who, you know, goes about,
8 you know, a home invasion robbery and trips on the way out on
9 some snow and says, "You were negligent in not shoveling the
10 show off your driveway."

11 Yeah, that's theoretically possible, but there
12 should be some level -- obviously Your Honor has discretion on
13 this, and obviously the issue, at least obvious to me, the
14 issue of unclean hands should come into effect, because -- or
15 should be taken into account, because bear in mind not only
16 does he bear the burden of proof on this issue but all -- he
17 shouldn't be messing with the LaCie drive at all. There's no
18 innocent reason for him to download documents onto the LaCie
19 drive when he has a OneDrive account available.

20 THE COURT: What -- I think that goes a bit too far,
21 though, doesn't it? What do you mean, there's no innocent
22 reason? I -- look, I have hard drives, I have OneDrive, I have
23 local drives, USB. I've got stuff strewn everywhere. I mean,
24 I wish one weekend I could just sit down and make it neat --

25 MR. UPPAL: Mm-hmm.

1 THE COURT: -- you know? And I spent about 20
2 minutes this weekend trying to do that, but I didn't get it.

3 MR. UPPAL: But the difference is, you own all that
4 information, so you should do and can do to your heart's
5 content whatever you want to do with it.

6 THE COURT: No, I know, but -- no, no, but the -- so
7 I don't understand how just using the LaCie drive is somehow
8 verboten. What -- you said there's no innocent reason to use
9 it.

10 MR. UPPAL: Mr. Ridley's contention is that before
11 Ecolab instituted or made available the OneDrive account,
12 individuals such as himself were encouraged to back up to local
13 drives, and Ecolab gave him the LaCie drive.

14 THE COURT: Right.

15 MR. UPPAL: Okay. Let's just indulge that, that that
16 made sense once upon a time. That's the only reason he's
17 offered. But that reason goes away as of 2018 when Ecolab
18 institutes this robust Microsoft cloud drive-based system. Now
19 there's no reason to back up to a local drive. So, in any
20 event, Your Honor, there was this other source of information,
21 which is solely the fault of Mr. Ridley for it being vanished.

22 The next argument that opposing counsel makes is,
23 also, the DLP, also known as the Digital Guardian Report,
24 doesn't show deletions and therefore my client should be
25 precluded from arguing that there were deletions from

1 Mr. Ridley's OneDrive account or, more specifically, the
2 folder that he called Ridley's Nalco Folder. But that fails,
3 because what they're not telling you or perhaps they don't
4 know is that the rules set on that Digital Guardian Report do
5 not account for deletions. We've confirmed this during lunch
6 with our expert. Okay?

7 So, remember, the purpose of the Digital Guardian
8 Report is essentially to show exfiltrations, downloading to
9 USB drives, downloading to external drives.

10 THE COURT: Mm-hmm.

11 MR. UPPAL: But deletions happen in the normal
12 course. So as I stand here today I do not know whether the
13 Digital Guardian Report -- whether it's possible for that
14 report to be -- for rules to be set to show deletions. But
15 let's assume that it is possible. What I am telling you is,
16 I've confirmed with my expert during the lunch break that for
17 the Digital Guardian Report that's at issue in this case --

18 THE COURT: Mm-hmm.

19 MR. UPPAL: -- the rules were set so as to not log
20 deletions. And there's nothing unusual about that, because
21 deletions happen in the normal course.

22 Finally, Your Honor, on this issue of sanctions, in
23 talking to my expert during the lunch break, he also had a
24 suggestion to Your Honor's point earlier on that is there some
25 indicia that files from the LaCie drive were transferred.

1 Well, first of all, as I said previously, there is some
2 indicia, because the same file packs and the same file names
3 exist on the WD drive. Okay? So the CrowdStrike report shows
4 the same file names on the WD drive as well as the LaCie
5 drive, and that is at least some indicia that there was a
6 transfer from whatever -- not from whatever, from the huge
7 amount of information and files that was downloaded to the
8 LaCie drive.

9 But if Your Honor, as I believe -- I'm not putting
10 words in your mouth, but if Your Honor is going to allow us to
11 inspect the wife's personal computer that we've learned about
12 for the first time today, should have been disclosed to us six
13 months ago, one of the things that we should be allowed to
14 look at on the wife's personal computer is, was the LaCie
15 drive hooked up to the wife's personal computer. We know as
16 of today and today for the first time that it was hooked up to
17 the WD drive. So why wouldn't it be hooked up to the LaCie
18 drive? Certainly it's possible.

19 So this is a suggestion that if Your Honor believes
20 that some type of sanction such as precluding us from arguing
21 that the LaCie drive was returned is appropriate, then my
22 request would be please hold that in abeyance until we at
23 least get to look at the spouse's computer to see if the LaCie
24 drive was hooked up to it and when it was hooked up to it,
25 because if that computer shows that the LaCie drive was

1 connected to it after July 1 of 2021, then Your Honor knows
2 that that LaCie drive was not returned.

3 THE COURT: Okay.

4 MR. UPPAL: Thank you, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. LUND: Your Honor --

7 THE COURT: Mm-hmm.

8 MS. LUND: -- if I may before I turn to Mr. Uppal's
9 argument, there are two issues that I just wanted to close the
10 loop on for Your Honor with regard to questions that you had
11 asked in our morning session.

12 THE COURT: Mm-hmm.

13 MS. LUND: And the first one -- and I'm going to put
14 this on the Elmo, and I apologize for my poor handwriting, but
15 I checked to see what I was remembering about the terabytes.
16 That specifically relates to the network folders to which
17 Mr. Ridley had no access permissions; that is, he was not
18 allowed to upload, download, view. So it's really separate.

19 THE COURT: Mm-hmm.

20 MS. LUND: But it has over 60 terabytes in the
21 network folders, which is roughly 4.5 billion pages. So that
22 is just one of the repositories that plaintiffs are asking to
23 search.

24 THE COURT: And what about the other ones? Any
25 ballpark ideas about the other ones?

1 MS. LUND: So everything that is identified as being
2 searched by ChemTreat's counsel with the blue --

3 THE COURT: Mm-hmm.

4 MS. LUND: -- that altogether is—let me just get
5 this number—623,346 files. And that is in our ESI report that
6 we filed at --

7 THE COURT: Mm-hmm.

8 MS. LUND: -- Docket 143. The things searched in red
9 I cannot attest to because that is information that we do not
10 have, but that would obviously be some incremental amount.

11 What I can tell you is that sales force employees in
12 general did not use their OneDrives very often. That seems to
13 be much more of a function of Nalco/Ecolab people, not
14 ChemTreat people. HR does use OneDrives as well as SharePoint
15 for things like their -- what they call the funnel, their
16 hiring funnel where they're considering hiring across the
17 ChemTreat network. So that's where this SharePoint appears as
18 well. But if you can see, Mr. Ridley had no upload or edit
19 permissions to any SharePoint file.

20 THE COURT: Okay.

21 MS. LUND: Okay. Then the second thing I wanted to
22 address -- and this actually ties into an argument which
23 Mr. Uppal made, which is, we had discussed this issue about the
24 synchronization between the second laptop and the OneDrive.
25 And that citation and discussion is in our reply in support of

1 our sanctions motion. It's Docket Entry 326, at Page 5. In
2 the last sentence just above the header B, it reads, "Given
3 that both plaintiffs and Ridley agree that the contents of his
4 cloud-based OneDrive automatically synced to his laptop's hard
5 drive, the same ESI from Ridley's first laptop, as reflected in
6 the DLP report, would have been available on the second laptop
7 at the time plaintiffs admit they had a duty to preserve that
8 laptop's ESI."

9 And the citation there to Exhibit 19, that's the
10 specific testimony from Mr. Garza, their -- you know, their
11 corporate representative and individual who actually recovered
12 the files from the OneDrive, explaining about the
13 bidirectional automatic synchronization between the laptop and
14 the OneDrive.

15 So turning, then, to Mr. Uppal's arguments, this
16 ties in because he was very focused on his question of
17 deletion of the OneDrive. Now, first of all, as I understood
18 his argument, plaintiffs' only evidence of this alleged
19 deletion is not the DLP report that Mr. Lieb opined was a
20 complete and thorough reflection of every interaction that
21 Mr. Ridley had with the OneDrive during the time period
22 covered, but, rather, Mr. Lieb's post hoc assessment seven
23 months later when he reviewed those files after they had been
24 collected in whatever manner they were collected.

25 I heard Mr. Uppal say now that Mr. Lieb is averring

1 that he recovered the OneDrive in January of 2022 as of the
2 status it had on July 1st, 2021. The problem is that, based
3 on the sworn testimony of Mr. Garza, that is literally
4 impossible. Mr. Garza made clear and testified repeatedly and
5 clearly that there is a 93-day period during which you can
6 recover the OneDrive or materials from the OneDrive and then
7 an additional 14-day period where with the outside assistance
8 of Microsoft's tech people you can retrieve it.

9 THE COURT: Let me -- let me interrupt, because I --
10 you lost me about 90 seconds ago. So start --

11 MS. LUND: I apologize, Your Honor. There's a lot of
12 facts and figures.

13 THE COURT: Start this thought again.

14 MS. LUND: And this is actually where it might be
15 helpful to just go ahead and look at our timeline, because --

16 THE COURT: Okay.

17 MS. LUND: -- you can see that the latest that
18 Mr. Garza could have recovered all the files that he recovered
19 on the OneDrive was at the end of July, and there was a 93-day
20 period for recovery. And in fact --

21 THE COURT: Okay. But explain -- I'm still not
22 caught up.

23 MS. LUND: Yeah.

24 THE COURT: Explain to me how you --

25 MS. LUND: And so -- and actually Your Honor actually

1 put this in the spoliation order, which is Document 349, at
2 Page 6, where you say, "Mr. Garza recovered the 93 days." If
3 you look at the testimony that was cited in support of that
4 93-day period --

5 THE COURT: Right. But tell me where you are on the
6 -- on this graph here, is what I'm --

7 MS. LUND: Oh, so I'm just using this, I guess, to
8 show -- well, first, the full period is 93 days. And if you
9 look at the testimony that we cited in our briefing,
10 Mr. Garza's testimony, when I examined him he explained 93 days
11 is the maximum period during which Ecolab can recover any
12 deleted files from a OneDrive or the OneDrive itself if it has
13 been deleted --

14 THE COURT: Mm-hmm.

15 MS. LUND: -- and then with outside help from
16 Microsoft there is an additional 14-day look-back period. So
17 the point is that if Mr. Lieb is saying that in January of
18 2022 -- and I'll make it clear that this was, as Your Honor
19 knows from the order you issued yesterday, a disputed issue for
20 which you have granted us leave to seek a deposition -- I mean,
21 to take a deposition of Mr. Lieb. If his position is now that
22 in January of 2022 he recovered the OneDrive as it existed
23 seven months earlier, that is literally impossible, for two
24 reasons, one, because if there actually were any deleted
25 documents, they were long gone, but, two, we know from

1 Mr. Garza's sworn testimony, as reflected in Your Honor's
2 order, that any deleted documents were recovered by Mr. Garza
3 as of the end of July of 2021 at the latest, and that that
4 93-day period without any outside assistance fully covers the
5 entire period covered by the DLP report.

6 THE COURT: Okay.

7 MS. LUND: Now, Mr. Uppal said that the DLP report
8 does not show deleted files. Again, this is directly contrary
9 to the testimony of plaintiffs' corporate representative and
10 the person who is in charge of the group that deals with this,
11 which was Mr. Garza.

12 In addition, it's directly contrary to the testimony
13 of Ms. Semmler, who actually ran the DLP report. And you will
14 see that we cited in our briefing the policy that she follows
15 that actually shows a screenshot of the rules that you can
16 select that includes deletion. And she testified clearly and
17 repeatedly that she always double-checks to be sure that each
18 of those categories is marked, including deletion.

19 So we have the sworn testimony of plaintiffs' own
20 witnesses versus a new opinion being offered, via counsel,
21 from Mr. Lieb today. And I do not think that this is the
22 point at which Mr. Lieb can be inserting new opinions
23 regarding what the DLP report would show, even if he had any
24 prior experience with DLP reports, which, as Your Honor knows
25 from the order issued yesterday, he does not.

1 So the next issue I wanted to address was, when
2 Mr. Uppal said that the synchronization that occurred with
3 Mr. Ridley's second laptop on July -- sorry, excuse me,
4 June 9th of 2021 would only reflect what was on his OneDrive
5 at the time. And that's absolutely correct. The problem for
6 plaintiffs is, that argument simply underscores the
7 significant prejudice that plaintiffs' spoliation of that
8 second laptop has worked on ChemTreat, because if we had that
9 laptop, which would show a snapshot of what was on it as of
10 July 1st, 2021, we would know had Mr. Ridley, contrary to the
11 DLP report, deleted those files from the OneDrive before he
12 left, in which case they would not appear on that second
13 laptop, or, as the DLP report reflects, were those files
14 simply copied, not deleted, not moved and lost, but simply
15 copied, in which case all of those files would still appear
16 there.

17 And one other data point I want to add on that,
18 Your Honor, is that you will see in the record—and I believe
19 it's Plaintiffs' 2008, but I don't have the exhibit citation,
20 I'll pull that for you—there is a single e-mail that
21 plaintiffs produced that reflects a warning from OneDrive
22 deletion that went to Mr. Ridley, and it says, "Heads up. We
23 see you just deleted a large volume of files from the
24 OneDrive. You have 93 days to recover them." That was sent
25 on May 11th. It is the only heads-up e-mail they've sent.

1 There is an out-of-office bounce-back to that e-mail that
2 occurs a few weeks later, but that is the only e-mail that
3 reflects deletion.

4 And the important point there is, first, it occurred
5 on May 11th, before any of the alleged misappropriation shown
6 on the DLP report—and you'll actually see it's reflected
7 here, it's Document 303-16, the May 11, 2021, on the
8 timeline—and, second, that it obviously cannot relate to any
9 deletion from Mr. Ridley's OneDrive of the misappropriated
10 files because all of those files were, according to
11 plaintiffs, misappropriated after that, but, second, it's
12 within this recovery period where Mr. Garza's testimony
13 confirms any deleted documents were recovered. So if that
14 related to the Nalco Water files rather than to, per
15 Mr. Ridley's testimony, some personnel files that he deleted,
16 they would have been recovered, regardless of the subject
17 matter of them.

18 And then, finally, Mr. Uppal referred to the idea
19 that there are the same file names in the CrowdStrike log as
20 appear on the DLP report as going to the LaCie drive. But as
21 we discussed this morning, the CrowdStrike log makes it clear
22 that those same files, the Nalco Water files, were linked to
23 the serial number of the WD drive and not the LaCie drive.

24 I will say—and you'll see this actually on the
25 remedial sanctions we were discussing—that consistent with

1 what Mr. Uppal just said regarding the sanction of the mobile
2 drive, it is not our intent to seek a sanction that is
3 counterfactual, it is our intent to seek a sanction that fills
4 an evidentiary gap that has been created by plaintiffs. So if
5 in the Special Master's review of Mr. Ridley's wife's laptop
6 he determines that the serial number of the LaCie drive was
7 connected on or after Mr. Ridley testified that he returned
8 that drive, then I think we need to revisit whether this is an
9 appropriate sanction and perhaps craft an evidentiary sanction
10 rather than this specific proposed one. But, otherwise, this
11 is a gap in the evidence that was created purely by
12 plaintiffs' spoliation that was, you know, at a minimum,
13 I would say, grossly negligent given that they were on notice
14 not only of potential litigation but of the importance of
15 external drives that Mr. Ridley had, that they didn't preserve
16 the mobile drive when they received it back from Mr. Ridley.

17 THE COURT: Okay. All right. Any rebuttal to that,
18 or --

19 MR. POPE: Your Honor, I have some points I'd like to
20 make here --

21 THE COURT: Yeah. Come on.

22 MR. POPE: -- three points.

23 THE COURT: Mm-hmm.

24 MR. POPE: Mr. Uppal says that there's -- there would
25 be proof of what could have been recovered had Mr. Ridley not

1 deleted files from the OneDrive. Your Honor, that's not the
2 proof that Mr. Ridley's interested in. Mr. Ridley's interested
3 in the proof that shows all of the files that were downloaded
4 to the LaCie drive were returned to Ecolab.

5 THE COURT: Mm-hmm.

6 MR. POPE: He can't show that with anything that was
7 on OneDrive. The only way that that can be shown is if Ecolab
8 produces the LaCie drive with the files that were on it when it
9 was returned. There's no way for Mr. Ridley to overcome the
10 prejudice without having that device. That's the first point.

11 The second point—and it follows some of what
12 Ms. Lund said—regarding Mr. Uppal's point that the DLP report
13 does not show deletion, Your Honor, the DLP report includes
14 over 16,000 files. The files are there on the DLP report.
15 Those files do not show that they were deleted. It just does
16 not show that on the DLP report. It shows -- so to the extent
17 that Mr. Uppal indicates that there's some question about
18 whether those files were deleted, they are on the DLP report,
19 they do not show deleted. Dave Garza, the 30(b)(6)
20 representative, indicates that that report shows no deletions.
21 That testimony seems clear.

22 THE COURT: Mm-hmm.

23 MR. POPE: And then the final point I'd like to make,
24 Your Honor, is that for the plaintiffs to be able to argue that
25 Mr. Ridley, because he made all these alleged

1 misrepresentations about other things, did not return the LaCie
2 drive completely cripples Mr. Ridley's ability to disprove what
3 the plaintiffs are saying.

4 They want to be able to say, "Well, he didn't return
5 the LaCie drive."

6 And Mr. Ridley would then want to say, "Well, show
7 me what I did return. Show me what I did return. Show the
8 jury that what I did return was not the LaCie drive."

9 THE COURT: Yeah.

10 MR. POPE: And the plaintiffs have prevented that
11 evidence from going to the jury. And that's just not
12 permitted, Your Honor. That's just not permitted.

13 Those are the three points that I have. Thank you.

14 THE COURT: Yes, sir.

15 MR. WALTON: Your Honor, we're going to -- I just
16 have two quick points to respond to Ms. Lund. Excuse my
17 handwriting here.

18 THE COURT: Mm-hmm.

19 MR. WALTON: Jim Vaughn is in red. Excuse my filling
20 in with the pen. One issue is, if he's going to get up here on
21 the stand in front of this jury and testify that he searched
22 all these repositories in red and there's no Nalco or Ecolab
23 files in there, in fairness, do I want to look through
24 4.5 billion pages? No. But if he's going to testify to that,
25 I should be able to search that, too.

1 Number 2, what we're asking for --

2 THE COURT: But that's not based on spoliation,
3 it's --

4 MR. WALTON: No, sir. That's based on the other
5 objection that's in front of you that was mentioned in your
6 order.

7 And then the other thing is that she's talking about
8 623,346 files for the "Individual Custodians." Well, he's --
9 they've searched those. What we're asking for is everything
10 that Mr. Vaughn searched and the local hard drives for these
11 12 people. So I just want to make that clear.

12 THE COURT: Well, let me ask you -- so you say
13 "everything that Mr. Vaughn searched." There are a couple of
14 entries on here that -- I'm not -- I'm not about to make any
15 hard-and-fast decisions on the fly here, but, you know, aren't
16 some of these repositories more relevant than others?

17 MR. WALTON: Potentially, but then he shouldn't be
18 able to testify to them.

19 THE COURT: I understand. But for the purposes of
20 the Special Master --

21 MR. WALTON: Yes.

22 THE COURT: -- I mean, I assume you're more
23 interested in "Other Salesforce Employees" and "Individual
24 Custodians" --

25 MR. WALTON: Yes.

1 THE COURT: -- than you are "HR" and "IT and Admin,"
2 right?

3 MR. WALTON: Absolutely. Absolutely, Your Honor.
4 But, again, as long as Mr. Vaughn can't testify to them and
5 he's precluded from testifying about HR and IT and
6 everything -- and I did it again, I apologize --

7 THE COURT: That's all right.

8 MR. WALTON: -- then we don't need to see it.

9 THE COURT: So, of those, within those two spaces
10 there, "Individual Custodians" and "Other Salesforce
11 Employees," tell me, you know, if you had to pick two of the
12 custodians and three of the ones in the other sales force, who
13 would you -- who would you say is the most necessary?

14 MR. WALTON: Well, I think -- well, I'm not going to
15 answer your question directly, because I would say at minimum
16 we need four -- these four individuals here, because they are
17 by far the --

18 THE COURT: "Individual Custodians"?

19 MR. WALTON: Excuse me? I'm sorry?

20 THE COURT: The individual you pointed to --

21 MR. WALTON: Yeah. Maybe not John Alcorn as much,
22 but Steve Leavell, Todd Cissell, and Tyler Bates. And then
23 I would say all the sales force employees are very important,
24 because they're the ones that we believe he would have been
25 trading data with that he took.

1 THE COURT: Well, tell me what -- I know you believe,
2 but who was he actually interacting -- what does the evidence
3 show --

4 MR. WALTON: You know, I don't -- they picked these
5 12 people for a reason. I don't know. I can get back to the
6 Court on that, or potentially list that, or potentially that's
7 something we can address with the Special Master. I can't
8 adequately identify, for example, did he have more contact with
9 Mr. DeNunzio versus Michael Kraft. I just don't know standing
10 here right now, Your Honor.

11 THE COURT: Is there anybody you would add to that
12 list?

13 MR. WALTON: Not that I'm aware of right now.

14 THE COURT: How many people are on there? One,
15 two --

16 MR. WALTON: Twelve, total. It's the four and the
17 eight, I think. One, two, three, four, five, six, seven,
18 eight, nine -- well, it's ten and the four. And, really,
19 I mean, John -- John Alcorn and Steve Leavell are pretty high
20 up.

21 THE COURT: Yeah.

22 MR. WALTON: So I'm thinking, you know, if you made
23 me pick two, it would be Clay Cissell and Tyler Bates, out of
24 those four. Okay?

25 THE COURT: Okay.

1 MR. WALTON: And then I would want as many
2 salespeople as I could get. But I don't need HR. I don't need
3 IT.

4 THE COURT: Mm-hmm.

5 MR. WALTON: I don't need secretaries, assistants.
6 And, again, that's --

7 THE COURT: What about this enormous Network Folders?

8 MR. WALTON: Excuse me, sir? I'm sorry?

9 THE COURT: What about the network folders?

10 MR. WALTON: Network folders? Well, again, if he's
11 not going to testify -- if Mr. Vaughn gets up and testifies,
12 "I searched the network folders and found no Nalco folders,"
13 then I want access to those network folders. If he's precluded
14 from testifying about that, then I don't need access to them.

15 THE COURT: Mm-hmm. Is there -- I mean, other than
16 that, is there proof either way on that issue that anybody has,
17 other than Mr. Vaughn?

18 MR. WALTON: I guess just Mr. Vaughn. I think he's
19 the only one to testify about it.

20 THE COURT: So if Vaughn didn't say that, it would
21 just be silent?

22 MR. WALTON: I'm sorry, Your Honor, I'm having
23 trouble hearing you.

24 THE COURT: That's all right. If Vaughn -- I was
25 really directing it to Ms. Lund --

1 MR. WALTON: Okay.

2 THE COURT: -- but if Vaughn didn't testify about,
3 for example, network folders, would we then hear other
4 testimony or evidence about network folders?

5 MS. LUND: Well, Your Honor, as I indicated,
6 Mr. Ridley did not have access to the network folders.

7 THE COURT: Right. And that's why I'm asking. Is
8 there --

9 MS. LUND: Right.

10 THE COURT: -- is there some other issue that's going
11 to show up and say, "Well, if it -- if he had stolen this, it
12 would be on the network folders, and I looked and I don't think
13 it was." Is there anything like that?

14 MS. LUND: If necessary, we could provide a witness
15 who could testify to that.

16 THE COURT: A fact witness?

17 MS. LUND: Yes, Your Honor.

18 THE COURT: Who -- who would know that?

19 MS. LUND: It would have to be somebody who dealt
20 with that. Essentially the way that it works, as I understand
21 it, is that you have to specially request permission to get
22 access to a network folder. And that goes through a
23 gatekeeper. And I don't know the name of the individual or
24 group that is the gatekeeping function.

25 THE COURT: Okay.

1 MS. LUND: But it is -- it is impossible for
2 Mr. Ridley to have uploaded anything to that or downloaded
3 anything from that. And that was searched for the names of all
4 11,000 plus unique file names on the DLP report, and there were
5 no hits.

6 THE COURT: Okay.

7 MR. WALTON: Well, I think if the testimony is,
8 Your Honor, that he didn't have access to it, it stops there,
9 they don't need to put anybody up on the stand to say that they
10 searched it and we don't need to have anybody up on the stand
11 to counter that.

12 THE COURT: Okay.

13 MR. WALTON: Okay?

14 THE COURT: Yes, sir. Anything else?

15 MR. WALTON: Thank you, Your Honor, no.

16 THE COURT: All right.

17 MS. LUND: Sorry, I know Mr. Uppal wants to address
18 my other points --

19 THE COURT: Yeah.

20 MS. LUND: -- but I thought it might be most useful
21 to address what Mr. Walton said --

22 THE COURT: Okay. Sure.

23 MS. LUND: -- given that that seemed to be more to
24 Rule 26 than to the spoliation. So the only question --

25 THE COURT: Well, honestly, let's punt for a minute

1 on Rule -- if you're about to focus on Rule 26.

2 MS. LUND: No, I just wanted to make one point, and
3 it has nothing to do with Rule 26, and it's really just that
4 Mr. Walton said that all of the sales force employees are very
5 important. And I would just note that we don't have any
6 evidence on that because plaintiffs, Mr. Walton, took
7 Mr. Ridley's deposition for the full permissible period under
8 the rule, and he did not ask about a single one of these
9 individuals, as I recall. And that is certainly something
10 you would expect to happen if the plaintiffs felt that these
11 individuals were in fact all very important employees.

12 THE COURT: Did -- were any of these people deposed?

13 MS. LUND: No, Your Honor.

14 THE COURT: Okay.

15 MR. WALTON: I'll just say one more thing. They
16 picked these people. They must have thought that they were
17 important. That's what I'm referring to. But I'll turn it
18 over to Mr. Uppal at this point.

19 THE COURT: Okay.

20 MR. UPPAL: Your Honor, at your order on Doc. 349,
21 Page 19, you note that the relevance prong of the spoliation
22 analysis requires that the party seeking sanction must make a
23 showing indicative that the destroyed evidence would have been
24 relevant to the contested issue. All right. So we're talking
25 about the second replacement laptop here.

1 THE COURT: Okay.

2 MR. UPPAL: There's no way that that showing can be
3 made or has been made by opposing counsel, because, quite
4 frankly, as Your Honor notes, the second laptop was given to
5 Mr. Ridley for a very short period of time. And, more
6 importantly, the evidence which opposing counsel cannot
7 overcome is that he did practically nothing with that second
8 laptop.

9 The Digital Guardian Report shows -- actually, let
10 me back up for a second. Mr. Ridley, during his deposition
11 testimony, states that he doesn't know when he got the second
12 laptop, he can't remember.

13 THE COURT: Mm-hmm.

14 MR. UPPAL: This is in line with his not remembering
15 a bunch of things, like the fact that he'd kept the WD drive.
16 But it appears from our records that he got the second laptop
17 on or about June 9, 2021. Okay? The Digital Guardian Report
18 shows that from June 2 through June 20 there's no activity.

19 THE COURT: For this laptop?

20 MR. UPPAL: Right. There's no -- there's no
21 downloading. Okay? Mr. Ridley also testifies -- remember,
22 there's only a three-week period there, essentially, between
23 him getting that second laptop on or about June 9, at the
24 earliest, and his departure on July 1. From June 2 to June 20
25 there's nothing --

1 THE COURT: Mm-hmm.

2 MR. UPPAL: -- per the Digital Guardian Report. As
3 for that last week, Mr. Ridley testified that he took a six-day
4 vacation right before he left --

5 THE COURT: Mm-hmm.

6 MR. UPPAL: -- and he didn't take the computer with
7 him because he never takes a computer with him. So --

8 THE COURT: So what are the dates of the vacation?
9 Is that --

10 MR. UPPAL: Six days prior to his return on July 1.

11 THE COURT: 1. Okay.

12 MR. UPPAL: So, Your Honor, that shows in and of
13 itself that there's nothing of relevance to a contested issue
14 on that second laptop. But, more importantly, there's been no
15 showing by the propounding party as to what Mr. Ridley did with
16 the second laptop.

17 Now, Ms. Lund and ChemTreat clearly have nothing to
18 say on this topic, unless, you know, they were engaged in some
19 conspiracy or fiduciary breach, right? They don't know what
20 Mr. Ridley did, presumably, while he was still working for us.
21 So they really have nothing to say on the topic. The only
22 person who might have something to say on the topic is
23 Mr. Ridley. And there is nothing in the record as to what
24 Mr. Ridley did using that laptop. He doesn't even remember
25 when he got it, but -- on or about June 9, 2021, through

1 July 1, 2021, but we do know there's nothing between June 2
2 and June 20 and he takes a six-day vacation where he doesn't
3 take the laptop with him because he never takes it.

4 THE COURT: Mm-hmm.

5 MR. UPPAL: Well, if you don't take the laptop with
6 you, then clearly you're not doing anything with it. That
7 covers almost the entire period. But even if now he wants to
8 claim, "Oh, there was something really important on that second
9 laptop, and it causes me great prejudice that you didn't
10 preserve the second laptop," at a minimum he's got to come
11 forward and show and testify to what he did with that second
12 laptop.

13 THE COURT: Right.

14 MR. UPPAL: There's nothing, like, literally nothing,
15 on that topic.

16 As to the other issues that were covered, on the
17 synchronization, Ms. Lund stated to you that it was covered in
18 her reply belief and that, you know, everyone seems to be in
19 agreement that a computer syncs with the OneDrive. Yeah,
20 okay, but it can only sync with materials that are present on
21 the OneDrive. If a file is not present on the OneDrive,
22 clearly there can be no synchronization of a nonexistent file
23 with the underlying replacement computer.

24 Furthermore, there has been argument by Ms. Lund
25 that Mr. Garza and Ms. Semmler -- or I think it was primarily

1 Mr. Garza testified that there is a 93-three day period of
2 recovery and then another 14-day period of recovery with the
3 help of Microsoft. Your Honor, that -- you know, the
4 commonsense understanding of that is, "Hey, if you delete
5 something, you can really only be assured of recovery if you
6 act within that 93-day period." But they did not testify that
7 there's a hard stop at either 93 days or 14 days afterwards,
8 such that, you know, by luck or happenstance or whatever might
9 happen, that no materials are going to be present.

10 THE COURT: Mm-hmm.

11 MR. UPPAL: And if they had testified, that would be
12 incorrect and a correction should be made, because we're
13 talking about sanctions here right now. And what happened here
14 in this case is that although Mr. Lieb was in fact retained
15 well after that 93-plus-14-day period, he found the Ecolab
16 documents. Ecolab documents are all on there. But the --
17 Ridley's Nalco folder from which he downloaded to the LaCie
18 drive, those are all gone. And what his report states is that
19 those were all deleted, they were present at one time, he knows
20 they were, because it's on the Digital Guardian Report. The
21 Digital Guardian Report shows that the file structure indicates
22 that there is Ridley's Nalco folder but it's gone, even though
23 Mr. Lieb was able to recover the OneDrive contents as they
24 existed on July 1, 2021. Now, I realize opposing counsel may
25 not like that fact, but it is a fact. We can establish it

1 through sworn testimony. And it's their burden, which they
2 haven't carried, to show that sanctions should be awarded.

3 Also, Ms. Lund stated to you or represented to you
4 that Mr. Garza testified that the Digital Guardian Report
5 shows deletions. Yes, it would show deletions if the rule was
6 set for deletion. Ms. Lund and her colleagues never
7 specifically asked -- I wasn't at Garza's deposition, I just
8 want to make that clear, but if you go back, they never
9 specifically asked Mr. Garza or Ms. Semmler in this case were
10 the rules set on the Digital Guardian Report to log deletions.
11 All they're saying to you is, they can be set in that manner
12 or typically they are set in that manner. But that doesn't
13 change the fact that in this case the rules were not set to
14 log deletions. And we have an expert who can testify to that
15 fact, that in this case the rules were not set to log
16 deletions. So they haven't carried their burden of proof on
17 this issue.

18 Mr. Pope. I want to address one of his main
19 comments. He stated that he -- his client has been greatly
20 prejudiced, not by his own conduct of engaging in this
21 downloading of material that he didn't own when he has no
22 business doing so given that he has a cloud drive account,
23 but, rather, his client has been gravely injured because if
24 the LaCie drive were preserved, it would show that Ridley
25 returned all files he downloaded onto the LaCie. No, it

1 wouldn't, because it would only show that he returned the
2 LaCie, because, remember, Mr. Ridley downloaded the entire
3 contents of his computer --

4 THE COURT: Mm-hmm.

5 MR. UPPAL: -- his Nalco computer, to the WD. So
6 this is a sleight of hand. Okay? Returning the LaCie would
7 only show -- or preserving the LaCie would only show that that
8 one path to the stolen material was returned. But the critical
9 issue here is that all that same material -- there's, like --
10 Mr. Ridley testified he made six or seven backups of his Nalco
11 computer to his WD drive and as he made those backups he didn't
12 delete the old ones.

13 So if you back up the entire contents of your Nalco
14 computer to the WD and wipe the WD and deprive us of it, even
15 if things have gone perfectly with the LaCie, that wouldn't
16 establish that you -- that Mr. Ridley returned all the files
17 that he took, no; that would only show, at most, that he
18 returned a copy of the files that he stole and
19 misappropriated.

20 And what I want to leave you with, Your Honor, in
21 case you're wondering, is, why didn't this WD issue come up
22 before? You've covered it in your order. It's because
23 Mr. Pope's client Mr. Ridley gave us a sworn interrogatory
24 response that indicated he last used the WD drive in 2015 or
25 2016. You see how much material we've had to cover. We're

1 entitled to rely on the sworn representation of Mr. Ridley
2 that he last used the WD drive more than half a decade before
3 he departed, right? So just like the Court, we have to pick
4 and choose our priorities.

5 THE COURT: Mm-hmm.

6 MR. UPPAL: Well, if you last used the two
7 thousand -- the WD drive in 2015 or 2016, I believe Your Honor
8 can appreciate why, relying on that sworn representation, our
9 focus wouldn't have been immediately on the WD drive until he
10 revealed otherwise during his deposition just in this year
11 that, "No, you know what, that WD drive contains multiple
12 backups, and I kept using it all the way through at least
13 2020."

14 And Your Honor has already noted, which hasn't come
15 up previously, although I tried to raise it, your order notes
16 that to this day Mr. Ridley has not corrected his
17 interrogatory responses. And it begs the question of how his
18 counsel can stand on those interrogatory responses, not having
19 corrected them.

20 So given the totality of the misconduct here and the
21 fact that ChemTreat can't even speak to what Mr. Ridley did
22 with the second computer, how can they possibly have carried
23 their burden under the relevance prong of showing that the
24 so-called destroyed evidence on the LaCie drive, if in fact he
25 gave us back the LaCie drive, is relevant to any contested

1 issue. It's not, because he didn't do anything with the
2 second computer. If he did, he certainly hasn't made a
3 showing and certainly not a showing that would warrant
4 sanctions in this case. Thank you, Your Honor.

5 THE COURT: Okay. Thank you.

6 MR. POPE: Briefly, Your Honor.

7 Mr. Uppal says that there's no activity from June
8 the 2nd to June the 20th. The plaintiffs' third amended
9 complaint, Doc. 229, at Page 25, alleges that Mr. Ridley took
10 certain action on June the 18th of 2021 related to Live.com,
11 on June the 21st of 2021, it's on Page 26 of the plaintiffs'
12 third amended complaint, and then on June the 29th of 2021,
13 that's Page 27 of the third amended complaint.

14 All of those actions would have been taken from the
15 second Ecolab laptop that Ecolab did not preserve. Because
16 Ecolab did not preserve that laptop, Mr. Ridley has no ability
17 to challenge or fight against those allegations, because they
18 -- they don't have it. One of those is related to
19 Mr. Ridley's contacts file. I believe that's the June 21st
20 date. Mr. Ridley admits that he downloaded his contacts. So
21 it's less relevant. But the other two are related to
22 Live.com. And, Your Honor, as it relates to Live.com, if we
23 had Mr. Ridley's second Ecolab laptop, we would be able to
24 better test these allegations related to Live.com. Mr. Ridley
25 denies that, denies that he uploaded his files to Live.com.

1 So that is prejudice that's a result of Ecolab's failure to
2 preserve the second laptop, the one that's at issue here.
3 That's all, Your Honor.

4 THE COURT: Okay.

5 MS. LUND: So, Your Honor, I'm going to put the
6 timeline back on the Elmo. And I've actually highlighted one
7 of the entries that Mr. Pope just referred to that is directly
8 from plaintiffs' own complaint, Paragraph 124, where plaintiffs
9 allege that on June 18th of 2021, that is, nine days after he
10 received his second laptop on which Mr. Uppal said there was no
11 activity, the DLP report, they claim, shows that Mr. Ridley at
12 that time uploaded from his second laptop to an alleged
13 personal Live.com account one of their documents. And that is
14 not, as Mr. Pope has flagged, the only instance where they
15 allege that, nor is it the only instance reflected on the DLP
16 report.

17 In fact, the DLP report shows that this same
18 Live.com account was visited on more than two dozen occasions
19 during the time period covered by the DLP report, including
20 eight separate days, five of which are after Mr. Ridley had
21 his second laptop. More importantly, the DLP report indicates
22 both upload and download activity from between that Live.com
23 account and the second laptop. So if in fact this was a
24 personal Live.com account or if it was, as we maintain, a
25 corporate account, that download from the account to the

1 second laptop would obviously be probative. We don't have
2 that probative evidence because plaintiffs spoliated the
3 second laptop, as Your Honor has ruled.

4 And I did not hear any response from Mr. Uppal to
5 the fact that if we had that spoliated second laptop we would
6 know for a certainty whether or not Mr. Ridley actually
7 deleted documents, we would know whether, as Mr. Lieb now
8 apparently opines, that those deletions were made before
9 July 1st, because Mr. Lieb claims he recovered all materials
10 as they existed as of July 1st, or if, to the contrary, as the
11 DLP report shows, that there were no deletions at all.

12 And with regard to these deletions, this notion that
13 that was not turned on to be logged, that is not testimony
14 that was provided by plaintiffs at all, it's not an opinion
15 that was offered by Mr. Lieb at all. I believe Mr. Uppal said
16 that he was not at Ms. Semmler's deposition or Mr. Garza's
17 deposition, and that's correct. I took those depositions.
18 I asked those witnesses whether there was any way to log or to
19 know what the query was that was run. And Mr. Garza demurred.
20 He said specifically that he was not aware of any such log.
21 And you can find that testimony at Document Entry 276-7, which
22 is excerpts from his testimony, on Pages 65 and 66.

23 And, again, Ms. Semmler, regardless of what the
24 default is, specifically testified that she always
25 double-checks to confirm that the deletion record is turned

1 on. So I'm not sure what sworn testimony plaintiffs believe
2 that they have -- they are going to submit on this issue, but
3 I will note, as I said, that Mr. Lieb did not offer an opinion
4 on it and that plaintiffs had the opportunity to submit errata
5 as to both Ms. Semmler and Mr. Garza and they did not do any
6 such errata for that.

7 And then, Your Honor, I did want to get into this
8 Live.com issue, which I heard Mr. Uppal refer to briefly,
9 because that relates to the last set of sanctions that we
10 haven't discussed yet that ChemTreat requested, but I don't
11 know if you wanted to move on to that or whether there's more
12 you wanted to hear on the issues that we have previously
13 discussed.

14 THE COURT: Go ahead. Go ahead.

15 MS. LUND: Okay. So the final two sets of issues
16 that we believe are sanctions that can be appropriately entered
17 either now or after the Special Master performs a review relate
18 to the loss of ESI caused by plaintiffs' spoliation. And the
19 first one is specifically tied to this evidentiary gap that was
20 created by plaintiffs by -- because they spoliated both the
21 second laptop and the mobile drive that Mr. Ridley returned and
22 then they failed to preserve the OneDrive, in that, according
23 to Mr. Garza's testimony, everything was recovered, and by the
24 time Mr. Lieb actually created the forensic image seven to
25 eight months after the plaintiffs were on notice of their duty

1 to preserve, it no longer contained those files that Mr. Garza
2 testified that he recovered.

3 And so right now we don't have any ability --
4 because we don't have those originals, we don't have the
5 copies of the originals or the copies of the copies of the
6 originals, there's no way for us to determine either whether
7 plaintiffs were actually trade secrets or whether any of the
8 handful of documents that plaintiffs produced are actually the
9 same documents that Mr. Ridley allegedly misappropriated. And
10 the problem is that plaintiffs have obscured the source of the
11 documents they produced. They did not provide the metadata
12 from the documents that they collected. They're, rather,
13 produced largely in folders that have a date from this year,
14 so, for example, February 23rd, 2023rd, or something like
15 that, such that we have no way to determine this
16 chain-of-custody evidence. And since we don't have the
17 originals, we have no way to know whether what plaintiffs have
18 produced in this litigation is actually what Mr. Ridley is
19 alleged to have misappropriated -- to have misappropriated.
20 And, again, that is an issue that was caused solely by
21 plaintiffs' spoliation of the second laptop, spoliation of the
22 mobile drive, failure to preserve the OneDrive. And so we see
23 a potential role for the Special Master here, given that we
24 don't have any chain of custody information, given that we
25 cannot determine the provenance of these documents because

1 plaintiffs produced them in such a manner as to obscure the
2 metadata. And we believe that the Special Master -- what we
3 believe, that Your Honor could simply enter the evidentiary
4 sanction that we have requested, given your finding of
5 spoliation, which is that plaintiffs not be permitted to claim
6 that any of the documents that they produced are the same
7 documents that Mr. Ridley allegedly misappropriated unless
8 they can substantiate that claim with chain of custody
9 evidence that shows that what they produced is the same as
10 what Mr. Ridley allegedly misappropriated without any changes.

11 But to the extent that Your Honor feels it would be
12 important to get further information on that subject, we do
13 believe that a Special Master could look into these documents
14 the plaintiffs produced, could have access and determine the
15 provenance or the chain of custody of them, and then
16 Your Honor could enter an appropriate sanction.

17 The second sanction, as you will see, relates to
18 this Live.com website. And there is a disagreement between
19 the experts retained by Mr. Pope on behalf of Mr. Ridley and
20 by us on behalf of ChemTreat regarding whether that
21 OfficeApps.Live.com website is a personal Live.com website or
22 a corporate one. And Mr. Garza testified that Ecolab
23 maintains its information in the Azure -- Microsoft Azure
24 Cloud, which is a cloud storage system such that you could
25 have a remote website like that. Obviously if we had

1 Mr. Ridley's second laptop we would be able to see what was
2 downloaded as -- from that website to his laptop, we would
3 also be able to check his internet history and see what pulls
4 up when you go to that website. We don't have any of that
5 because plaintiffs spoliated the ESI on the second laptop.
6 And so, again, this is another evidentiary gap that was
7 created by plaintiffs.

8 The same website that was visited with the first
9 laptop was visited with the second laptop, such that even if
10 the activity were primarily on the first laptop, although it
11 was not, it would still be probative as to the entire period.
12 And so we think, here again, that the Court could simply enter
13 this evidentiary sanction and preclude plaintiffs from arguing
14 that any Live.com website Mr. Ridley visited while at Ecolab
15 was a personal rather than corporate account.

16 Alternatively we do believe that there's a role the
17 Special Master could play here where the Special Master could,
18 you know, access that website through the Ecolab system to
19 determine, when you go there, what is the landing page, is it
20 a personal account, or is it an Ecolab account. Perhaps
21 there's some work to be done with the -- the particular IP --
22 and now we're sort of speaking beyond my knowledge, but in
23 terms of, like, what the site was that was accessed on the DLP
24 report, to determine -- Mr. Garza testified that you actually
25 would need to do some investigation with the DNS

1 identification to see whether that was associated with Ecolab.
2 And it's my understanding that because it links to the Azure
3 cloud, we would need to look into Ecolab's systems.

4 So there too we feel that these final two sanctions
5 are sanctions that could either be entered now or following a
6 Special Master investigation.

7 And then finally I will just note that with regard
8 to this briefing we would also seek our fees and costs.

9 Unless Your Honor has questions on that, I'll allow
10 Mr. Uppal to respond.

11 THE COURT: Okay.

12 MR. WALTON: Mr. Walton's actually going to respond
13 to that, Your Honor.

14 First of all, I can't believe that she said that the
15 documents that are deleted was caused solely by us. He took
16 the OneDrive, and now we know he used his wife's computer to
17 wipe it; we had nothing to do with that -- I'm sorry, the WD
18 drive. We had nothing to do with that, absolutely nothing to
19 do with that.

20 What we had to do with discovery in this case,
21 Your Honor, is, a lot of the documents that we had to produce
22 as exemplars, according to the rulings from Judge Lee, we had
23 to go back and recreate as a company. We had to go back and
24 run scripts, we had to go back and run searches of our
25 databases, because he had the only copies of that. We didn't

1 have copies of the fact packs and stuff like that laying
2 around. We had to go back and recreate them. So a lot of
3 these exemplar documents, we had -- you know, I think we
4 exceeded our discovery obligations by going back and
5 recreating them, but that's what we had to do.

6 And so for her to say that the deletion of those
7 actual documents that he took is our fault, I can't see how
8 she can say that. It's the WD drive that was used to take
9 most everything in this case. Yes, our third amended
10 complaint focuses on the LaCie drive, but that's all that we
11 knew about at the time. We didn't know all the shenanigans
12 occurred with the WD drive. We sure as heck didn't know he
13 had six to ten full backups of his Nalco computer on the WD
14 drive. And at the time we filed the third amended complaint,
15 we sure as heck didn't know that he was plugging his WD drive
16 into his ChemTreat computer. We had no idea about any of
17 that. So we didn't delete the documents that he took, he did.
18 We had nothing to do with that.

19 On the Live.com, we know that he has a personal
20 Live.com account. They know he has a personal Live.com
21 account. Why? They fired him for sending an e-mail from his
22 Hotmail account, which is part of Live.com -- every time you
23 have a Hotmail account, it opens up a Live.com account for
24 you. They know he has a Live.com account, because he has a
25 Hotmail account. And they fired him for sending a personal

1 e-mail from his Hotmail account to his work account with a
2 Nalco document. So there's no need for that sanction, either,
3 Your Honor. Thank you.

4 MR. UPPAL: Your Honor, may I address the other
5 points?

6 THE COURT: Mm-hmm.

7 (Brief pause.)

8 MR. UPPAL: Ms. Lund, again, during her last argument
9 before the Court, made representations to you about what Garza
10 or Semmler had to say about the Digital Guardian Report and
11 whether or not it shows deletions. Your Honor, my expert
12 witness, Mr. Lieb, is here, and he's willing to show and
13 demonstrate to the Court right now, if Your Honor will let him,
14 that in this case the Digital Guardian Report, the rules for it
15 were not set to log deletions.

16 So if Ms. Lund wants to be heard to complain to the
17 Court that Ms. Semmler and Ms. Garza said something during
18 their depositions that she believes was misleading to her or
19 incorrect, then so be it, I can understand that. But what
20 we're talking about here is whether or not my client should be
21 sanctioned. And for purposes of sanction, it's unrebutted
22 that the rules for the Digital Guardian Report were not set to
23 log deletions. And therefore whatever Ms. -- Mr. Garza and
24 Ms. Semmler may have had to say on this topic is not relevant
25 to the issue of sanctions.

1 And, again, Ms. Lieb -- excuse me, Ms. Lund did not
2 dispute one of the issues that I presented to the Court, which
3 is, you know, she told you that she took the depositions, and
4 I'm not blaming her, I'm not saying that she's not a highly
5 competent attorney or anything like that, but I said to you
6 she or whoever took those depositions did not specifically ask
7 Garza or Semmler in this case, "Did you set the rules on the
8 Digital Guardian Report to log deletions?" That just wasn't
9 asked, and that's why she doesn't have that information.
10 I understand why she's unhappy with it. I'll even be willing
11 to concede that in a perfect world Garza or Semmler maybe
12 should have known differently.

13 THE COURT: Mm-hmm.

14 MR. UPPAL: But we're still left with the fact that
15 the rules were not set to log deletions.

16 All right. Turning to Mr. Pope. I still don't
17 see -- Mr. Ridley clearly has a duty to correct his false
18 interrogatories, but so does Mr. Pope, his attorney. Mr. Pope
19 cannot leave those false interrogatories hanging out there.
20 And if you noted, he had nothing to say on that topic. And
21 the reason that is relevant is because the whole
22 prejudice-to-his-client argument rests on the fact that his
23 client misled us and prevaricated about his use of the Western
24 Digital drive and represented that the backups stopped in 2015
25 or 2016. And I just don't see how, as a counsel for a client

1 who made that sworn representation, you as an attorney can
2 ethically let that knowingly false yet sworn interrogatory
3 hang out there without a correction. And so given that
4 circumstance, it would seem that equity would demand that
5 Mr. Ridley has no route to sanctions at all.

6 But turning to the argument that I made that nothing
7 really was done with the second replacement computer, I said
8 to Your Honor that the DLP report shows no activity from
9 June 2 through June 20, and then after that for the six days
10 prior to his departure date of July 1, 2021, he went on
11 vacation and didn't take the computer. Well, that's
12 uncontested. Mr. Pope has nothing to say about that. But
13 Mr. Pope gave three examples. He said on June 18 there is an
14 indication that there was an interaction with Live.com. Okay.
15 Well, that certainly falls between the dates of June 2 and
16 June 20. But Live.com is not one of the major issues in this
17 case. Yes, we put this out there, but it certainly doesn't
18 have to do with the WD drive, it certainly doesn't have to do
19 with the LaCie drive. It's one interaction. That certainly
20 doesn't carry the burden of showing that a contested issue --

21 THE COURT: Mm-hmm.

22 MR. UPPAL: -- is relevant to the failure to preserve
23 the second replacement laptop.

24 Second example he gave you of activity was on
25 June 21, which is outside that June 2 to June 20 period that

1 I argued to Your Honor that the DLP report shows no activity
2 with the replacement laptop. But, more importantly, the only
3 activity on June 21, according to Mr. Pope, was that
4 Mr. Ridley downloaded his contacts. But he told you—and we
5 agree with this—that that's not a relevant incident, because
6 although he took those contacts, Mr. Lieb was able to recover
7 them from a USB drive.

8 THE COURT: Mm-hmm.

9 MR. UPPAL: So that certainly is not relevant to the
10 issue of sanctions. And then on June 29, again, Mr. Pope, this
11 is the third example he gave you, that there is purportedly an
12 interaction with Live.com. I don't have that in front of me,
13 but I'm going to take his word for it. How does that carry
14 their burden of establishing that sanctions should flow from
15 the failure to preserve the second laptop? At most, that would
16 indicate that we should not be allowed, I suppose, to argue
17 that there was some nefarious interaction with Live.com, that's
18 it. But Mr. Pope's original argument of his client has been so
19 severely prejudiced by the failure to preserve that second
20 laptop, he clearly has not carried his burden of proving the
21 relevance prong.

22 And, Your Honor, I would ask you to keep in mind as
23 to why there is a second laptop. The whole reason there's a
24 second laptop is because Mr. Ridley, knowing that he was
25 leaving, while in the midst of essentially having negotiated

1 his deal with ChemTreat, decides to complain to Ecolab's IT
2 that, "There is a noisy fan on my computer." And, Your Honor,
3 that was just clearly a setup, because he knew that if he
4 turned in the first laptop, which he used, you know, to
5 download all the information to the LaCie drive, that that
6 laptop would be taken by IT and essentially cleaned such that
7 nothing would be --

8 THE COURT: How would he know that?

9 MR. UPPAL: -- recovered from his laptop.
10 Your Honor, it's an inference.

11 THE COURT: I gave my laptop to IT yesterday for four
12 hours, and they didn't wipe it.

13 MR. UPPAL: But you don't have a history of --

14 THE COURT: They just brought it back and said, "We
15 couldn't fix it."

16 MR. UPPAL: But, Your Honor, you don't have a history
17 of making false albeit sworn statements.

18 THE COURT: Oh, I do. Actually I do. I do it all
19 the time. No, listen, I'm joking. But I covered this in the
20 order.

21 MR. UPPAL: Yes, Your Honor.

22 THE COURT: It's -- it's -- I don't know what
23 happened, but I do know that the next two people who had the
24 computer didn't appear to be happy with it, either, right?
25 So...

1 MR. UPPAL: Fair enough. But there is one other
2 piece of testimony I want to leave you with. On, you know,
3 this claim of, "Hey, I need a new laptop because the laptop is
4 noisy" --

5 THE COURT: Mm-hmm.

6 MR. UPPAL: -- during his deposition Mr. Ridley
7 testified that the first laptop was working fine during the
8 period that he downloaded to the LaCie drive. Thank you,
9 Your Honor.

10 THE COURT: Okay. All right. So, not directing this
11 to anybody in particular, just to everybody, but -- all right,
12 it is 2:15. We've been doing this -- no, wait a minute, 3:10,
13 sorry.

14 MR. WALTON: Yeah, it's 3:10.

15 THE COURT: Had it reversed. We've been doing this
16 three hours and ten minutes. And think about what a jury trial
17 would look like if these were our issues. I mean, just think
18 about that. It's -- nobody thinks that's a good idea, right?
19 All right.

20 MS. LUND: So, beginning with Mr. Walton, Mr. Walton
21 addressed the issue of the WD drive, and I'm not entirely sure
22 why, because the WD drive is not at issue in ChemTreat's
23 sanctions request. But he said that, you know, Mr. Ridley, not
24 plaintiffs, is responsible for the loss of the ESI in the WD
25 drive. And that is certainly true as far as it goes. But as

1 we know for a certainty, both the WD drive and the LaCie drive
2 were simply copies of the originals that were on the laptop or
3 the OneDrive, that same synced account --

4 THE COURT: Mm-hmm.

5 MS. LUND: -- and that is what was lost by
6 plaintiffs. And I think we have well-plowed the ground with
7 regard to the evidence that shows that anything that Mr. Ridley
8 deleted was recovered by Mr. Garza, such that if it no longer
9 appeared at the time that Mr. Lieb imaged that copy of the
10 OneDrive, that is attributable to plaintiffs and not to anyone
11 else.

12 I did want to address, though, Mr. Walton's point
13 that they were forced, according to him, to recreate documents
14 and that he believes they, quote, exceeded their discovery
15 obligation. And I think that is a surprising statement to
16 hear, given that we had to engage in the lengthy course of
17 getting the stipulated order after filing a motion to compel
18 and then filing a motion to compel compliance with that order
19 and having a hearing in front of Magistrate Judge Lee at which
20 she ordered plaintiffs to produce documents and she
21 specifically ordered that they either produce exemplars of
22 Mr. Ridley's actual documents or that they produce documents
23 that were similar and, if so, to provide an attestation
24 regarding what they had done to locate the original documents
25 and why you're being forced to use substitute documents

1 instead.

2 Plaintiffs did not provide that attestation. They
3 did not tell us that their documents were recreations. We had
4 no idea that these were not the documents that they had at
5 least -- that they at least believed were connected to
6 Mr. Ridley until we saw their spoliation opposition. So
7 I think, given that, that this is another area in which the
8 Special Master could do yeoman's work in determining what
9 precisely was recreated and how it was recreated, because we
10 still don't even know which documents specifically that
11 plaintiffs produced were allegedly recreated and how they were
12 recreated, using what sources. So that's the first issue.

13 The second issue with regard to Mr. Uppal's
14 argument, I think -- I didn't really hear anything --

15 THE COURT: But does it -- does it matter how they
16 were recreated? Why does it matter?

17 MS. LUND: Well, it matters to the extent that -- for
18 example, if we're talking about financial documents --

19 THE COURT: Because's here's why I ask, Mr. Lund.

20 MS. LUND: Yes.

21 THE COURT: And this is not only directed to you,
22 it's directed to everybody who's spoken, other than maybe
23 Mr. Pope. Mr. Pope has a little different outlook here.

24 What -- I hear a lot of, "I want to know everything,
25 everything," which has never occurred in any case, with or

1 without ESI, right?

2 MS. LUND: (Moving head up and down.)

3 THE COURT: At some point you have to say, "Okay,
4 time to try it, time to try it." So explain to me --

5 MS. LUND: Right.

6 THE COURT: I guess I could come up with why that's
7 relevant, and I'm not sure how overwhelmingly convincing it
8 would be, but --

9 MS. LUND: Right. No, I'm glad you asked,
10 Your Honor. And the reason is because, as you know, with
11 regard to the misappropriation claims the key question is
12 whether there was any disclosure of use of plaintiffs' trade
13 secrets. But of course that requires plaintiffs to
14 substantiate that there were any trade secrets, and that
15 requires knowing the content of the documents. So what the
16 documents show is critical.

17 THE COURT: Mm-hmm.

18 MS. LUND: And if, for example, we are talking about
19 a recreation of a financial document where essentially it is
20 generated from data that is stored in a central database and
21 that data hasn't changed, we don't have any concern -- we need
22 to know, but we're not concerned about whether that button was
23 pushed on a particular date in 2021 or a particular date in
24 2022, as long as there's no change of the data. But when you
25 start talking about these other documents, which seem to be the

1 bulk of what they claim was misappropriated, the limited
2 metadata that we have, as I said, much of it just shows an
3 ingestion folder, where apparently a bunch of documents that
4 came from who knows where were put into a folder with the 2023
5 date.

6 But the ones for which we do have some metadata
7 show, for example, that Karry Mackie chose things that she
8 described as exemplars and she put them into a OneDrive folder
9 and that OneDrive folder was collected by plaintiffs' counsel.
10 Where did those documents come from? Whose documents were
11 they? Were they Mr. Ridley's documents? Were they somebody
12 else's? We don't know. And given that, according to
13 plaintiffs' own testimony, they have these six service
14 standards which requires everybody to use sort of similarly
15 formatted documents, we just have no way of knowing whether
16 this is the document that Mr. Ridley allegedly had or if it
17 relates to somebody else.

18 Likewise, about half of the documents that they
19 produced as their alleged trade secrets appear to have come
20 from a PST archive which is an e-mail archive, but none of the
21 parent e-mails were produced. So we have absolutely no
22 context at all, no way to know where these documents came
23 from, what dates they were, anything to connect them to
24 Mr. Ridley. And so all of that is to say that we agree with
25 you, like, discovery has to come to an end. We believe

1 discovery had come to an end.

2 If the Special Master has a role, it is a very
3 limited role, it is only to address these sort of corollary
4 issues regarding evidentiary gaps. But, to us, this is a
5 critical issue. And given that plaintiffs spoliated the
6 originals, if they are going to claim that something else they
7 have produced is in fact the document that Mr. Ridley took,
8 then we should be entitled to look into that, or Your Honor
9 could simply enter an evidentiary sanction that requires them
10 to provide that clear chain of custody evidence before they
11 can make that argument that anything was the same.

12 And then, finally, the last thing I just wanted to
13 address with regard to Mr. Uppal's argument, which, to me, I
14 don't believe any unique or new points were raised except with
15 regard to his, I would say, faint praise of my deposition
16 techniques where he suggested perhaps it's not my fault that I
17 didn't ask Ms. Semmler. But in fact I did ask Ms. Semmler.
18 I asked her on Pages 100 to 101 of her deposition whether she
19 selected all of the operation types, which included deletions,
20 and she said yes. And I said, "Do you confirm it?"

21 And she said, "I always confirm it. I double-check
22 it." And so that is clear.

23 THE COURT: Mm-hmm.

24 MS. LUND: And then, again, they haven't produced any
25 log, they haven't provided any opinion from Mr. Lieb. And if

1 discovery has to come to an end, then these are all issues that
2 they could have raised before and, frankly, they could have
3 raised in any of the unfortunate number of pages that we have
4 all exchanged in briefing *Daubert* motions, spoliation motions,
5 sanctions motions, summary judgment motions, and yet this is
6 the first time, at this hearing, that we are now hearing them
7 claim that in fact that rule -- there is a rule, that there's a
8 way to log it, and the log shows that it was turned off.

9 I just think, you know, the horse is out of the barn
10 on that. It's too late. If they wanted to present that, they
11 should. But for plaintiffs to raise an entirely new argument
12 that has never before been aired and then say, "Clearly
13 ChemTreat has not met its burden of proof," that really turns
14 it upside down.

15 THE COURT: Okay.

16 MS. LUND: We met our burden of proof. We believe we
17 are entitled to sanctions. Thank you, Your Honor.

18 THE COURT: Okay.

19 Mr. Walton, I'll hear from you, and then this is
20 their motion so I'll give them the last word. So let's wrap
21 it up.

22 MR. WALTON: All right. I just have to say,
23 Your Honor, it's just like when you were saying to Mr. Uppal if
24 we had the mobile drive we would know whether it was the LaCie
25 drive, right?

1 THE COURT: Mm-hmm.

2 MR. WALTON: The same concept applies here. If
3 Mr. Ridley took documents -- he says he didn't take documents
4 with the LaCie drive. He admits taking documents with the WD
5 drive. He admits connecting them to his ChemTreat computer.
6 He admits now wiping that. So if we had the WD drive, we would
7 have had the exact documents that he took.

8 THE COURT: Mm-hmm.

9 MR. WALTON: And she keeps saying we deleted them,
10 and we didn't, he did. And so we then had to go back --
11 because a lot of his files, Your Honor, were, like, 10 -- were,
12 like, I'm sorry, 20 years of customer files that only he had.

13 THE COURT: Mm-hmm.

14 MR. WALTON: You know, when you were in private
15 practice, I'm sure that you had client files, I'm sure. He
16 took all those with him. So there wasn't any other source of
17 those. So if we had the WD drive, if he didn't wipe it, we
18 would know exactly what he took and we would have been able to
19 produce them to them in discovery. Because we didn't have
20 them, we had to create some exemplars, which Judge Lee
21 specifically allowed us to do.

22 THE COURT: Mm-hmm.

23 MR. WALTON: Okay.

24 THE COURT: All right. Anything else? Have we
25 covered everybody's requests for sanctions? Everybody's been

1 heard? Anybody feel unheard?

2 (Brief pause.)

3 THE COURT: All right. Let's take a short break. Is
4 anybody on the verge of missing a flight or anything? Are we
5 on the edge?

6 MS. LUND: Your Honor, I have a 5:00 flight, but
7 I also have the ability to delay that to a later --

8 THE COURT: To not - to not go?

9 MS. LUND: Well, tomorrow, tomorrow, but it's fine
10 because I can enjoy the lovely Chattanooga area.

11 THE COURT: All right. Let me -- just give me a
12 couple minutes and let me make sure. If we have to end there,
13 we will, but let me...

14 (Brief recess.)

15 THE COURT: So let me quickly tell you what's coming
16 so that before everybody gets on a plane you can radio back and
17 tell all those nameless associates to get to work.

18 (Laughter.)

19 THE COURT: I'm going to put down an order, probably
20 tomorrow, and here are the things I'm going to do. One thing
21 I'd like to know is, for all these repositories, how big each
22 one is.

23 Ms. Lund, so that's coming. So you might want to
24 get somebody to work on that.

25 We talked about a trial date. We -- with regard to

1 the scheduling order, we -- we delayed -- what did we delay?
2 Motions in limine? Okay.

3 Okay. Let me think about jury instructions. That's
4 coming up in a little bit.

5 Tell me -- and I want to ask you to tell me by
6 Tuesday about the mediator situation. If you can't nail it
7 down -- and I know it's a -- I know it's a heavy lift, I'll
8 get to work. It may not be who you want or where you want,
9 but I'll find somebody.

10 And then I think I'm going to have you brief,
11 essentially, what we've done today. I've got this transcript.
12 I'll review this transcript. But it occurs to me that if we
13 can have you put down in writing, like I said, what you're
14 asking for, what it's tied to, and sort of slow down a little
15 bit and remind me why this information isn't somewhere else,
16 or why it is somewhere else. There was a lot of that that,
17 quite frankly, was hard for me to follow. Okay? I tried,
18 but -- and I got half of it. So I'll go back and read the
19 transcript and I'll get 25 percent more. And then hopefully
20 you can fill in the rest.

21 So what I'm thinking is, have -- have you brief your
22 motions, if it's -- if it's your spoliation motion, have you
23 brief it by a week from now at noon or so, and then respond
24 early that next week. But tell me if that's asking too much.
25 Any input on that?

1 MR. WALTON: We can do that, Your Honor. Now,
2 I think technically there were three motions in front of the
3 Court today -- well, more than three, because I think there was
4 spoliation motions against them, spoliation motions against us.
5 Do you want us to rebrief the issues regarding the computer
6 that was used to wipe the WD drive, or would you like us to
7 address that, too? On getting access to the wife's computer
8 and --

9 THE COURT: Well, if -- it's fine to include that.
10 I think -- I think by the end of -- within this hearing you
11 were asking for that as a sanction.

12 MR. WALTON: Yes. Yes.

13 THE COURT: So that's fine. What I want this to
14 focus on is what I should do in response to your motion for
15 sanctions.

16 MR. WALTON: Gotcha. Okay.

17 THE COURT: And connect it to Rule 37. Okay?

18 MR. WALTON: Okay.

19 THE COURT: I want you to do this. I want the
20 Special Master -- and let me -- I'm sorry, I don't want you to
21 brief anything to do with what I would do at trial.

22 MR. WALTON: Okay.

23 THE COURT: So I don't need briefing on, "Don't let
24 them argue this. Don't let them argue that. Don't let them
25 take this position."

1 MR. WALTON: Okay.

2 THE COURT: I want to know what you propose the
3 Special Master do.

4 MR. WALTON: Understood.

5 THE COURT: And tie it to sanctions, right?

6 MR. WALTON: Gotcha. Thank you.

7 THE COURT: So just the Special Master. I've got
8 plenty to work with for trial. Okay?

9 MR. WALTON: Okay.

10 THE COURT: Does everybody understand that?

11 MS. LUND: (Moving head up and down.)

12 MR. WALTON: Thank you, Your Honor.

13 THE COURT: Okay. I think that's all I have. Any
14 questions or anything else anybody wants to raise?

15 MS. MIRMIRA: Your Honor, just a quick clarification.
16 We had agreed on January 29th, I believe.

17 THE COURT: 29th, yeah.

18 MS. MIRMIRA: And so will the other pretrial
19 deadlines flow per Your Honor's default rules from before?

20 THE COURT: Let me look at it. Let me look at it.
21 It's going to depend -- it's going to depend on -- I mean,
22 I think the most practical thing to do is see what the Special
23 Master comes up with and then decide whether you guys need to
24 edit your briefing at all, right?

25 MS. LUND: (Moving head up and down.)

1 MR. WALTON: Okay.

2 THE COURT: And so I don't know. I don't know. If
3 it changes, it will be to give me more time, though.

4 MS. MIRMIRA: That's perfectly fine. I just
5 didn't -- we didn't want to inundate the Court with paper to
6 move upcoming deadlines in August.

7 THE COURT: That's fine. We only have -- I think we
8 only have jury instructions, right?

9 MS. MIRMIRA: We have the trial briefs and --

10 MR. WALTON: Trial briefs.

11 MS. MIRMIRA: -- there's a host of deadlines coming
12 due on the 21st.

13 MR. WALTON: I'm sorry to interrupt you, but there's
14 trial briefs, there's depo designations.

15 MS. MIRMIRA: Yes.

16 THE COURT: Yeah.

17 MS. MIRMIRA: It's all in the trial briefs, right?

18 THE COURT: Let me look at it.

19 MR. WALTON: I think a lot of it was August 21st.
20 I think that was the deadline.

21 MR. POPE: The 14th is the depo designations.

22 THE COURT: Let me also say, and you can address this
23 if you want to, I don't think it's worth -- I'm going to put a
24 page limit on the Special Master briefing tied to spoliation.
25 I -- you can address it if you want. I wouldn't burn too many

1 pages on this issue, because I think I know what I'm going to
2 do.

3 MS. LUND: (Moving head up and down.)

4 THE COURT: But I will most likely start with you
5 splitting the costs. I don't know what to do about our second
6 defendant over here. I'll figure that out. But there's --
7 it's going to be split. And depending on what is found or not
8 found, the burden is going to move around. Okay?

9 MR. WALTON: (Moving head up and down.)

10 THE COURT: And if we -- if we get -- if we do it --
11 if the Special Master -- you know, we -- I talked to you about
12 who was the most important, for example. If we -- if we go and
13 do some searches about, you know, half of these people and you
14 find the Comstock Lode, then, you know, these guys are going to
15 have to bear some costs; if you find nothing, it's coming your
16 way, right? So --

17 MR. WALTON: Yeah.

18 THE COURT: But we'll start off trying to share it.

19 Mr. Pope, you may be the one who most needs to
20 address that.

21 MR. POPE: Right. Right. That's my question,
22 Your Honor. I mean, I know the Court has set a mediation date.
23 Mr. Ridley is extremely sensitive to the costs associated with
24 the Special Master, with the mediator, all of those things.
25 Your Honor, it's just untenable for him, it is.

1 THE COURT: Mm-hmm.

2 MR. POPE: And so I would ask the Court, if there's a
3 chance that we're going to have the mediation soon, is there
4 any way that we could put the Special Master issue past the
5 mediation so that those costs aren't incurred before the
6 mediation, because... (Shrugging shoulders.)

7 THE COURT: Well, I hear you, and I'm sensitive to
8 it. I'll say two things. I think the other parties in the
9 room can absorb this, no matter who's most blameworthy. Okay?
10 And I think it's important to get this done quickly. And it
11 might actually help at mediation, right? I think it will help
12 at mediation.

13 MR. POPE: Okay.

14 MR. WALTON: (Moving head up and down.)

15 THE COURT: So let me -- and if anybody disagrees
16 with any of that calculus I just threw out there, tell me,
17 because I know -- I mean, I understand it's a -- you know, if
18 Mr. Ridley were sitting on a pile of money, we'd be having a
19 different discussion, but...

20 MR. POPE: The only other thing, Your Honor, is,
21 I believe our counter deposition designations are due this
22 coming Monday, the 14th.

23 THE COURT: You've already designated depositions?

24 MR. POPE: We've designated.

25 THE COURT: Okay.

1 MR. POPE: And then it will be counter-designations.
2 So if we are also going to brief by a week --

3 THE COURT: Yeah. Yeah.

4 MR. POPE: -- I would ask for some limit there.

5 THE COURT: I'll look at that. I'll look at that.

6 All right. Anything else?

7 MR. UPPAL: Your Honor, I have a quick clarification.

8 THE COURT: Mm-hmm.

9 MR. UPPAL: I was furiously trying to write down your
10 instructions --

11 THE COURT: But I -- but you'll get an order
12 tomorrow, so -- but --

13 MR. UPPAL: Gotcha. If I can just ask this one
14 clarification. SO --

15 THE COURT: Yeah.

16 MR. UPPAL: -- you said that the briefing should
17 focus on what the Special Master should do and "I don't want to
18 hear what" you -- what Your Honor will do at trial.

19 THE COURT: Right.

20 MR. UPPAL: So are you essentially saying in this
21 briefing don't put in arguments that "This argument or this
22 claim should be precluded"?

23 THE COURT: Exactly.

24 MR. UPPAL: Thank you.

25 THE COURT: So let's focus on what as a sanction the

1 Special Master should do. And then we'll -- you know, if we
2 know more later, I mean, it may change what we do at trial,
3 right? I mean, depending on what you find or don't find, it
4 may change what it makes sense to do at trial. So I don't
5 think it -- I don't think it is the best use of everybody's
6 time to focus on trial issues at this moment. But push back if
7 you disagree. So... Okay. Thanks, everybody.

8 MR. WALTON: Thank you, Your Honor.

9 MS. MIRMIRA: Thank you, Your Honor.

10 END OF PROCEEDINGS

11
12
13 I, Elizabeth B. Coffey, do hereby certify that I
14 reported by mechanical stenography the proceedings held on this
15 date in the above-styled cause, and that this transcript,
16 produced by computer, is an accurate record of said
17 proceedings.

18 s/Elizabeth B. Coffey

19 Elizabeth B. Coffey,
20 Official Court Reporter
21 United States District Court
22 Eastern District of Tennessee
23 900 Georgia Avenue
24 Chattanooga, Tennessee 37402
25